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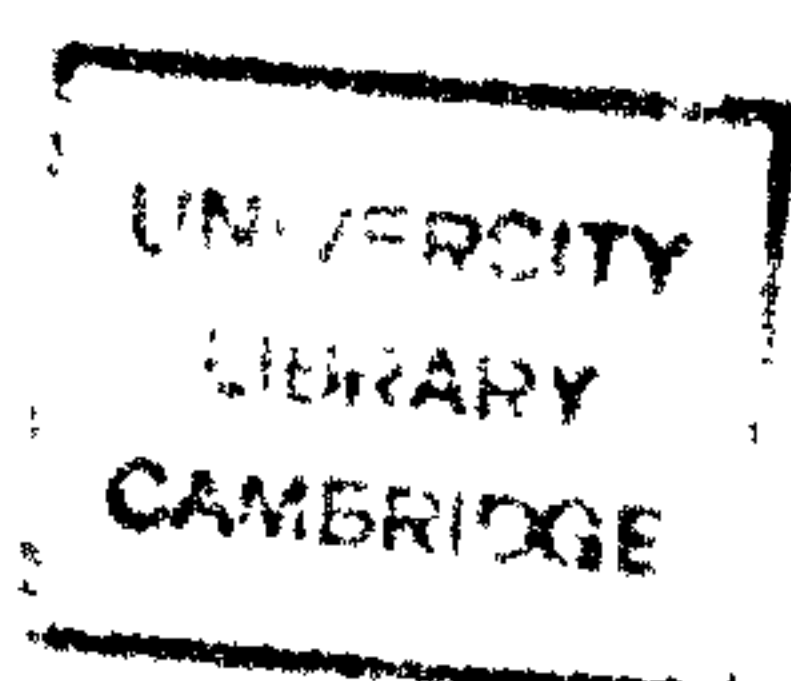
**MARRIAGE AND CELIBACY IN MEDIAEVAL ISLAM:
A STUDY OF GHAZALI'S *KITĀB ĀDĀB AL-NIKĀḤ***

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**MARRIAGE AND CELIBACY IN MEDIAEVAL ISLAM:
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This study of Abu Hamid al-Ghazali's *Kitāb ādāb al-nikāḥ* identifies influences which shaped the book's form and content. The study uses literary sources in Arabic from the Islamic tradition, including Islamic jurisprudence (*fiqh*), Sufi treatises, Arabic belles lettres (*adab*) and medical literature. Three main influences are addressed: a religious debate on the merits of marriage, the particular Muslim attitude to sexuality, and the Islamic legal view of marriage.

The *Kitāb ādāb al-nikāḥ* was written in the context of a religious debate on the merits of marriage and celibacy, a debate which first emerged in Sufi circles. The *Kitāb ādāb al-nikāḥ* directly responded to this controversy, providing the probably fullest discussion about marriage in mediaeval Islam and the most comprehensive list of reasons why mediaeval Muslims would marry.

The first to openly challenge the institution of marriage was Abu Talib al-Makki in his Sufi treatise, the *Qūt al-Qulūb*. The *Kitāb ādāb al-nikāḥ* directly responds to the discussion of marriage in the *Qūt al-Qulūb*, and a substantial part of this study is therefore devoted to analysing the relationship between the two texts.

Ghazali's argument in favour of marriage in the *Kitāb ādāb al-nikāḥ* is informed by a pragmatic and positive attitude towards sexuality, according to which a healthy, balanced life included sex. This attitude to sexuality reflected the prevailing mediaeval Muslim view of the place of sexuality in human life. Ghazali's view of sexuality is analysed and placed in the context of other Muslim writings on the subject.

In pre-modern times, the institution of marriage in Muslim societies was governed exclusively by religious law, the *šariʿa*. In the *Kitāb ādāb al-nikāḥ*, Ghazali provided a concise but exhaustive list of the laws governing this central Muslim institution according to the Shafī'i school of law, to which he belonged. Ghazali's list of the laws of marriage and divorce is complemented by the laws of the other three Sunni schools of law, as well as Shi'i law.

TO MY PARENTS, ALL THREE.

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PREFACE

This is primarily a study of Abu Hamid al-Ghazali's (d.1111) *Kitāb ādāb al-nikāḥ* ("Book on the Manners of Marriage"). The study uses Arabic sources from the Islamic tradition, including Islamic jurisprudence (*fiqh*), Sufi treatises, Arabic belles lettres (*adab*) and medical literature. The term "mediaeval" is used generally to refer to the period from the beginning of the 9th to the beginning of the 18th century.

THE STRUCTURE OF THE THESIS:

Ghazali's discussion of marriage in the *Kitāb ādāb al-nikāḥ* is informed by a positive and pragmatic view of sexuality. The Introduction argues that Ghazali's attitude to sexuality reflected the pragmatism and frankness with which mediaeval Muslims in general addressed this subject. Examples are given of the treatment of sexuality, and matters relating to it, in jurisprudence, *adab* and a medical treatise. Finally, a comparison is drawn between the Muslim and Christian attitudes to sexuality.

Chapter One describes the close connection established by Ghazali between the sexual appetite and the appetite for food. The *Kitāb ādāb al-nikāḥ* forms part of Ghazali's important ethical treatise, the *Iḥyā' 'ulūm al-dīn*. Marriage is discussed twice in the *Iḥyā' 'ulūm al-dīn*, in the *Kitāb ādāb al-nikāḥ* and the *Kitāb kasr al-šahwatain* ("Book on the Controlling of the Two Desires"). In both cases, the discussion occurs parallel to a discussion of food, and Ghazali's attitude towards sexuality can be better understood in the light of this close connection between the desire for sex and the desire for food.

Chapters Two, Three and Four loosely follow the structure of the *Kitāb ādāb al-nikāḥ*, which is divided into three chapters. Chapter Two analyses the first chapter of the *Kitāb ādāb al-nikāḥ*, in which Ghazali discussed reasons for and against marriage. His arguments are recaptured and explained. It is argued that form and content of the first chapter of the *Kitāb ādāb al-nikāḥ* are substantially shaped by the fact that Ghazali was generally responding to a religious debate on the merits of



marriage and celibacy, a discussion which first emerged in Sufi circles, and specifically to the work of one particular Sufi author, the *Qūt al-qulūb* of Abu Talib al-Makki.

Chapter Three focuses on the legal aspects of marriage, such as the marriage contract and the legal eligibility of the spouses, which Ghazali listed in the second chapter of the *Kitāb ādāb al-nikāḥ*. Also included are the laws of divorce, which only appear in the third chapter of the *Kitāb ādāb al-nikāḥ*.

Chapter Four summarizes advice on the conduct of married life, which Ghazali presented in the third chapter of the ^{*Kitāb ādāb al-nikāḥ* in the} *ʿIḥyāʾ ʿulūm al-dīn*. Particular emphasis is placed on showing that Ghazali's choice of issues is almost identical with the issues addressed by Abu Talib al-Makki in his discussion of marriage in the *Qūt al-qulūb*.

Chapter Five continues to explore the close relationship between Makki's and Ghazali's text. Four aspects of Ghazali's text are singled out for closer analysis: his attitude towards sexuality and towards women, his discussion of contraception and his treatment of divorce. On all four issues, Ghazali was either directly or indirectly responding to Makki.

The Conclusion argues that Makki and Ghazali were pursuing different aims when writing on marriage and celibacy. The analysis is based in particular on the authors' own conclusions, which in the *Qūt al-qulūb* appears at the very end of the discussion, and in the *Kitāb ādāb al-nikāḥ* at the end of the first chapter. It is argued that whereas Makki was presenting an argument in favour of celibacy disguised as a discussion, Ghazali's discussion of marriage and celibacy is a genuine comparison of two equally valid options.

Ghazali reacted to the discussion of marriage in Makki's *Qūt al-qulūb* in a variety of ways, ranging from rearranging material collected by Makki, to responding to specific issues raised by him, to simply copying large parts of Makki's text. The index of identical passages provided in Appendix One reveals just how extensively Ghazali relied on Makki's text as a source of material. It also highlights significant changes Ghazali made to Makki's material.

An important aspect of Ghazali's response to Makki was the rearrangement of material copied from Makki's text. Appendix Two provides a list of the most obvious examples of Ghazali rearranging the contents of Makki's discussion.

A DESCRIPTION OF THE SOURCES USED

Kitāb ādāb al-nikāḥ

The *Kitāb ādāb al-nikāḥ*. is the twelfth "book" of Ghazali's *Iḥyā' ʿulūm al-dīn*. The *Iḥyā'* has not been critically edited, but there are many published and unpublished manuscripts of the text. (listed by Carl Brockelmann, *Geschichte der Arabischen Litteratur*, 2 vols. (2nd ed., Leiden, 1943-49), vol.1, p.539 (GI 422).; Supplement, 3 vols. (Leiden, 1937-42), vol.1, p.748 (SI 748)). I used four manuscripts of the *Kitāb ādāb al-nikāḥ*, three of them published, one unpublished. The oldest, unpublished, manuscript (from 1149 A.D.) is held in the Chester Beatty library (A.Arberry, *The Chester Beatty Library - a Handlist of the Arabic Manuscripts* (Dublin 1955-64), no.3353: manuscript of the second quarter of the *Iḥyā' ʿulūm al-dīn* from 10 Dhu 'l-Qada 543/22 March 1149 (Brockelmann GI 422, SI 748). Two published versions of the *Kitāb ādāb al-nikāḥ* appear in the most important commentary on the *Iḥyā' ʿulūm al-dīn*, the *Ithāf al-sāda al-muttaqīn bi šarḥ Iḥyā' ʿulūm al-dīn* by Muhammad Ibn Muhammad al-Murtada al-Zabidi (10 vols., reprint, Dar Ihya' al-Turath al-'Arabi, Beirut, 1970's ?), one in the main part of the text, one on the margin. The third manuscript was published in Cairo, but reprinted at Beirut (*Iḥyā' ʿulūm al-dīn*, 5 vols., Beirut, Dar al-Ma'rifa, nd.). I used a copy of the Beirut reprint. Unless otherwise indicated, all references in this thesis are to the Beirut text printed at Dar al-Ma'rifa.

The *Kitāb ādāb al-nikāḥ* has been translated into English (Madelaine Farah, *Marriage and Sexuality in Islam; A Translation of al-Ghazali's Book on the Etiquette of Marriage from the Ihya'* (University of Utah Press, 1984)), German (Hans Bauer, *Von der Ehe in Islamische Ethik*, Heft II (Halle, 1917) and French (L.Bercher et G.H.Bousquet, *Le Livre des bons usages en matière de mariage* (A.Maisonneuve, 1953).

There are two important Arabic commentaries on the *Iḥyā'*: the abovementioned *Ithāf al-sāda al-muttaqīn bi šarḥ Iḥyā' 'ulūm al-dīn* by Muhammad Ibn Muhammad al-Murtada al-Zabidi (d.1790), which is, incidentally, the only one mentioned by Brockelmann (GI 422, SI 748), and the *Mahajjat al-baiḍā' fī tahqīb al- Iḥyā'* by the Shi'i scholar Muhammad bn Murtada al-Kashani (d.1680).

Abu Hamid al-Ghazali

For information on Ghazali's life and works, I have primarily relied on the following: D.B Macdonald gives an account of "The life of al-Ghazali" in *Journal of the American Oriental Society*, vol. xx, 1899, p.71-132. A.J. Wensinck *La Pensée de al-Ghazali* (Paris, 1940) is a book which "tries to present [] the essentials of Ghazali's views on a number of subjects representing [] a complete picture of medieval thought" (translated from the preface). Margaret Smith *Al-Ghazali the Mystic* (London, 1944) presents "a study of the Life and Personality of [] al-Ghazali, together with an account of his Mystical Teaching" (title page). W. Montgomery Watt *Muslim Intellectual- A Study of al-Ghazali* (Edinburgh, 1963) is described by the author as "a study of the struggle and achievement of al-Ghazali" (p.vii). Peter Antes *Prophetenwunder in der Ash'ariyya bis al-Ghazali* (Freiburg, 1970) opens with a concise biography and a short description of Ghazali's methods of intellectual criticism and four of his most important works, the *Iḥyā' 'ulūm al-dīn*, the *Tahāfut al-falāsifa*, *al-Iqtiṣād fi 'l-i'tiqād* and *al-Munqid min al-dalāl* (in "Al-Ghazali's Leben und Werke", pp.1-8). Hava Lazarus-Yafeh *Studies in al-Ghazālī* (Jerusalem, 1975) offers a detailed study of Ghazali's use of language and the central themes of his philosophy.

I have also consulted two translations of what Annemarie Schimmel refers to as Ghazali's "spiritual autobiography"¹, *Al-Munqid min al-ḍalāl*, Richard McCarthy *Freedom and Fulfillment* (Boston, 1980) and W. Montgomery Watt, *The Faith and Practice of al-Ghazali* (London, 1953).

Ghazali's Ethical Theory

¹ Annemarie Schimmel, *Mystical Dimensions of Islam* (University of North Carolina Press, 1975), p.92.

The *Iḥyāʾ ʿulūm al-dīn* is partly an ethical treatise, and the discussion of marriage in the *Kitāb adāb al-nikāḥ* is strongly influenced by the ethical concept of the mean. Of crucial importance for an understanding of Ghazali's theory of the mean are the first three Books in the Third Quarter of the *Iḥyāʾ*, called "The Ways to Perdition" (*muhlikāt*). Book One discusses "The Mysteries of the Heart", Book Two "The Training of the Soul", and Book Three gives advice on "The Controlling of the Two Desires." Ghazali also devoted a separate book to his discussion of ethics, the *Mīzān al-aʿmāl*, which has been translated into French by Hikmat Hachem (*Critère de l'action* (Paris, 1945)).

The concept of the mean was first elaborated by the Greek philosopher Aristotle in his chapter on moral virtue in the *Nicomachean Ethics*: Richard McKeon, ed., *The Basic Works of Aristotle* (New York, 1941), *The Nicomachean Ethics* Book II -V.

A discussion of Ghazali's ethical theories can be found in the following works: M. Umaruddin, *The Ethical Philosophy of al-Ghazali* (Aligarh, 1962), M. Abu 'l-Qasem, *The Ethics of al-Ghazali - a Composite Ethics in Islam* (Delmar, New York, 1978), Majid Fakhri, *Ethical Theories in Islam* (Brill, 1991): Part Four, Chapter Six: The Synthesis: al-Ghazali, and George F. Hourani, *Reason and Tradition in Islamic Ethics* (CUP, 1985) Chapter 11: Ghazali on the Ethics of Action.

The Muslim view of Sexuality

Ghazali's discussion of marriage reveals an open, pragmatic attitude towards sexuality, which is characteristic of the attitude expressed in various kinds of Muslim literature. I have looked at the discussion of sexuality, and matters relating to it, in Islamic jurisprudence, *adab* and Arabic medicine.

Jurisprudence (*fiqh*, the science of religious law in Islam) was one of the most important literary activities of Muslim scholars. The task of the jurist was to interpret the often ambiguous religious sources in order to provide the individual believer with guidelines for the right moral and social conduct in every aspect of his or her life. To lead a religious life, in accordance with the rules and regulations set out in the Quran and by the Prophet, was of central importance to the life of every Muslim, since failure

to do so was believed to lead to eternal perdition. Islamic jurisprudence presents us with a vast body of regulations and material on all aspects of human activity, religious, political and civil. The jurists also discussed many aspects of human sexuality:

The "Book of Marriage" in 'Abd al-Wahhab al-Sha'rani's *Kitāb kaṣf al-ḡumma ʿan jamīʿ al-umma*, 2 vols. in 1 (Cairo, A.H. 1303) (*Kitāb al-nikāḥ*, vol.2, pp.44-98) contains a chapter on the manners of intercourse, including coitus interruptus ("*Ādāb al-nikāḥ wa mā jāʾa fī al-ʿazl*", pp.79-81), a chapter on masturbation ("*Fī al-istimnāʾ*", p.81) and on sodomy ("*Fī tahrim ityān al-marʾa fī dabriha*", pp.81-82). Abu al-Faraj 'Abd al-Rahman Ibn 'Ali Ibn al-Jauzi, *Kitāb aḥkām al-nisāʾ* (Beirut, 1981), includes Chapter Six on female circumcision ("*al-Kitān li' l-nisāʾ*", pp.144-151), Chapter Forty-Five on lesbianism ("*Taḥrīm al-siḥāq li' l-nisāʾ*", pp.284-6) and Chapter Seventy-Four on how women should behave during intercourse ("*Adab al-marʾa ʿind al-jimāʿ*", pp.349-351). Muhammad Ibn Abi Bakr al-Zar'i Ibn Qayyim al-Jawziyya, *al-Jawāb al-kāfi liman saʾala ʿan al-dawāʾ al-šāfi* (Riyadh, 1972) includes a section on male homosexuality (p.149-154). Muhammad Ibn Muhammad al-'Abdari al-Fasi Ibn al-Hajj (d.1336-7), *al-Madḳal*, 4 vols. (2nd ed., Beirut, 1972) contains a chapter on the manners of sexual intercourse (vol.2, pp.188-96) and a chapter on sexual taboos (vol.2, pp.196-200).

The term *adab*, which can have a range of meanings², is used here in the sense of "belles lettres". I consulted a selection of *adab* works which all, in one way or another, address the subject of sexuality. In some cases, entire books are devoted to the subject (as in the case of practical, pseudo-medical guidebooks on sex), in other cases, only parts of certain chapters address this issue (as in the case of the encyclopedia). Two of the best known guidebooks on sex are Muhammad Ibn Muhammad al-Nafzawi (15/16 c), *al-Rauḍ al-ʿātir fī nuzhat al-kāṭir* (Maktabat al-Manar, Tunis, nd.) English translation by Sir Richard Burton, *The Perfumed Garden of the Sheikh Nafzawi* (Castle Books, New York, 1964) and Ahmad Ibn Yusuf al-Tifashi (d.1253), *Rujūʿ al-šaiḳ ilā šibāḥ fī al-qūwa ʿalā al-bāḥ* (Egypt, nd.).

²see F.Gabrieli, "Adab", *Encyclopedia of Islam*, 2nd. ed. (Leiden: E.J.Brill, 1960).

Erotic material is included in the encyclopedias of knowledge of Abu Muhammad 'Abdallah Ibn Muslim Ibn Qutaiba (d.889), *ʿUyūn al-aḵbār*, 4 vols. (Cairo, 1925-30), Husain Ibn Muhammad al-Raghib al-Isfahani (d.1108), *Muhaḍarāt al-udabāʾ*³, 4 parts in 2 vols. (Maktabat al-Hayat, Beirut, 1961) and Ahmad Ibn 'Abd al-Wahhab al-Nuwairi (d. ca.1332), *Niḥayat al-arab fī funūn al-adab* (Cairo, 1923-43).

In addition, I consulted the sexual treatise of Muhammad Ibn Ahmad al-Tijani (d.1543), *Tuḥfat al-ʿarūs wa nuzhat al-nufūs* (Cairo, 1883-4), a collection of "the eloquence of women" including much talk of sex by Abu al- Fadl Ahmad Ibn Abu Tahir (d. 893-4), *Balāḡāt al-nisāʾ*³(Cairo, 1908), a manual on courtly love by 'Ali Ibn Ahmad Ibn Hazm (d.1063), *Ṭauq al-ḥamāma*, transl. into German by Max Weisweiler, *Halsband der Taube* (Leiden, 1944), "the most important extant treatise on love by a member of the Hanbalite school"³, Ibn Qayyim al-Jawziyya's (d.1350) *Raudat al-muḥibbīn wa nuzhat al-muṣtaqīn* (Beirut, 1977), and two works on the interpretation of dreams, Muhammad Ibn Sirin (d.728), *Muntakab al-kalām fī taʿbīr al-aḥlām*⁴ (printed on margin of Nabulsi, *Taʿtīr al-anām*) and 'Abd al-Ghani Ibn Isma'il al-Nabulsi (d.1731), *Taʿtīr al-anām fī taʿbīr al-manām*, 2 vols. (Dar al-Kutub al-'Arabiyya, Cairo, nd.).

Valuable insight into the medical discussion of human sexuality is provided by the famous medical treatise of Abu 'Ali al-Husain Ibn 'Ali Ibn Sina (d.1037), the *Kitāb al-qānūn fī al-ṭibb*, 3 vols. (reprint of Bulaq Cairo edition of 1877, Dar Sadir, Beirut, nd.).

Secondary works I have consulted, which address the subject of sexuality in Islam from various angles include the following: Abdelwahhab Bouhdiba, *Sexuality in Islam* (RKP, 1985) looks at the sacred and special role Islam ascribed to sexuality, a role Bouhdiba traces to the treatment of sexuality in the Quran. Basim Musallam, *Sex and Society in Islam* (CUP, 1983), is a study of birth control in the classical Islamic world. Joseph N. Bell, *Love Theory in Later Hanbalite Islam* (State University of New York

³Joseph N. Bell, *Love Theory in Later Hanbalite Islam* (State University of New York Press, 1979), p.12.

⁴this work is attributed to Ibn Sirin, but is, in fact, a compilation made, at the beginning of the 15th Century, by Abu Ali al-Husayn b. Hasan b. Ibrahim al-Khalili al-Dari (T.Fahd, "Ibn Sirin", *Encyclopedia of Islam*, 2nd ed. (Leiden: E.J. Brill, 1971).

Press, 1979) examines the writings on love of leading Hanbali jurists. Fatna Sabbah, *Woman in the Muslim unconscious* (Pergamon Press, 1988) compares the contradictory images of women emerging from what she calls "Religious erotic discourse" and "Orthodox discourse" on Muslim women. 'Afaf Lutfi as-Sayyid Marsot, ed., *Society and the Sexes in Medieval Islam* (Undena Press, Malibu, California, 1979), presents a collection of articles on relations between the sexes in mediaeval Islam based on jurisprudence, *hadīṭ*, *adab*, Sufi writings and letters and documents from the Cairo Geniza.

The Christian View of Sexuality

The thesis compares the Islamic and the Christian attitude towards sexuality. I use the term Christianity here as referring to the views formulated by the Fathers of the Church which later developed into the official teachings of the Church. Elaine Pagels, *Adam, Eve and the Serpent* (Penguin, London, 1988), traces "how []the early Church [] came to preach the doctrine of original sin and to regard sexual desire as the inherent and shameful enslavement of humanity " (summary on back cover). Peter Brown, *The Body and Society - Men, Women and Sexual Renunciation in Early Christianity* (Columbia University Press, 1988), presents a "study [of] the practice of permanent sexual renunciation - continence, celibacy, life-long virginity as opposed to observance of temporary periods of sexual abstinence - that developed among men and women in Christian circles in the period from a little before the missionary journeys of Saint Paul, in the 40s and 50s A.D., to a little after the death of Saint Augustine, in 430 A.D. " (from the preface, p.xiii).

Two books trace the development of Christian sexual ethics and their practical implications up to the present day. Karl Heinz Deschner *Das Kreuz mit der Kirche* (4th ed., Heyne, 1990) provides a history of sexuality in Christianity, and Uta Ranke-Heinemann *Eunuchs for Heaven* (André Deutsch, 1990) looks at the development of sexual ethics in Catholicism. In *Contraception, A History of Its Treatment by the Catholic Theologians and Canonists* (Belknap Press, Harvard, 1966), John T. Noonan focuses on the effects of Christian sexual ethics on the question of birth control.

A comparison is also drawn in the introduction between the writings of Muslim and Christian authors on the subject of sexuality. In mediaeval European Christian society, literary works which referred to sexuality could be divided into two distinct categories: the writings of members of the religious establishment, such as monks and clerics, reflecting the official, hostile views of the Church on sexuality, and the writings of the laity, among them members of the nobility and itinerant minstrels, who addressed sexuality in a more open and lighthearted manner, and, for this very reason, came under attack from members of the Church. A description of different kinds of secular writings which developed in European Christian society from the eleventh century onwards can be found in Alfred Götze's article, "Ausserkirchliche abendländische Literatur des Mittelalters" in *Die Religion in Geschichte und Gegenwart*, Band I - V (Tübingen 1909-13), vol.3, pp.2243-55, in the chapter on courtly love in Joachim Bumke's study of the culture of European secular courts in the 12th and 13th century, *Höfische Kultur - Literatur und Gesellschaft im hohen Mittelalter*, 2 vols. (dtv, 1986), vol.2, pp.503-582, and in the study of itinerant minstrels and the culture of popular theatre in the late Middle Ages by Rolf Johannsmeier, *Spielmann, Schalk und Scharlatan - Die Welt als Karneval: Volkskultur im späten Mittelalter* (Rowohlt, 1984).

The Sufi Discussion

The *Kitāb adāb al-nikāḥ* was written in the context of a religious debate on the merits of marriage and celibacy which first emerged in certain Sufi circles. The first to compare the merits of marriage to the merits of celibacy was Abu Talib al-Makki (d.998) in his Sufi treatise *Qūt al-qulūb fī muʿāmalat al-maḥbūb*, 2 vols in 1 (Cairo, 1893). A much shorter discussion of marriage and celibacy occurs in the *Kašf al-maḥjūb* of 'Alī Ibn 'Uthman al-Hujwiri (d. approx.1071), transl. into English by R.A. Nicholson (Leiden, London 1911) and in 'Umar bn Muhammad al-Suhrawardi's (d.1234) *ʿAwārif al-maʿārif* (in vol.5 of Abu Hamid al-Ghazali's *Iḥyāʾ ʿulūm al-dīn*, 5 vols. (Beirut, Dar al-Ma'rifa, nd.)).

For general information on early Sufism, I have relied heavily on Annemarie Schimmel's excellent reference book on the history of Sufism, *Mystical Dimensions of*

Islam (University of North Carolina Press, 1975). Tor Andrae's *Islamische Mystik* (2nd ed. Kohlhammer, 1980) describes the ascetic practices of the early Sufis, and traces their origin to the influence of Christian monks. Margaret Smith, in *Studies in Early Mysticism in the Near and Middle East* (London, 1931), also emphasises the close connection between the ascetic practices of the early Sufis and Christian monks. Her book is "an account of the rise and development of early Christian Mysticism in the Near and Middle East up to the seventh century, and of the subsequent development of Mysticism in Islam known as Sufism, together with some account of the relationship between early Christian Mysticism and the earliest form of Islamic Mysticism." (quote title page). A. Arberry, *Sufism - An Account of the Mystics of Islam* (London, 1950) also looks at the origins of the mystical movement in Islam, and traces its development until the beginning of the 16th century. R.A Nicholson *The Mystics of Islam* (London, 1914) is described in the preface as "a general introduction to Islamic mysticism".

Ira M. Lapidus *A History of Islamic Societies* (CUP, 1988) contains information on the place of Sufism in the life of the Muslim community between the years 600 to 1200 A.D.: Chapter Six "Urban Islam - the Islam of the Religious Elite" has a section on "Mystics and Sufism", Chapter 10 "Muslim Communities and Middle East Societies" includes a section on "Sufi Brotherhoods", and Chapter 12 "The Personal Ethic" has a section on "Alternative Islam: Philosophy, Gnostic and Popular Sufism".

The Laws of Marriage and Divorce:

A substantial part of the *Kitāb adāb al-nikāḥ* is devoted to the laws of marriage and divorce. Ghazali was writing as a Shafi'i jurist, and his instructions are based on the laws of his school. For a more complete understanding of the Islamic laws of marriage and divorce, I also looked at the writings of the leading jurists of the other three Sunni schools of law, as well as Shi'i law.

For the views of the Hanbali school, I chose two works by Abdallah Ibn Ahmad Ibn Qudama (d.1223), *Al-Muḡnī ʿalā šarḥ muḵtaṣar al-Kiraqī*, 9 vols. (3rd ed., Cairo, 1947-8/A.H.1367). and *Al-ʿUmda*, transl. into French by Henri Laoust, *Le*

Précis de droit d'Ibn Qudama, (Beyrouth, 1950). The *Muḡnī* systematically describes the views of the other three Sunni schools of law.

On Hanafi law, I consulted 'Ali Ibn Abi Bakr al-Marghinani (d.1197) *Al-Hidāya šarḥ bidāyat al-mubtadī*, 4 vols. in 1 (Cairo, 1936), transl. by Charles Hamilton, *The Hedaya* (2nd ed., London, 1870), Shams al-A'imma Abu Bakr Muhammad al-Sarakhsi (d.1090) *Kitāb al-mabsūṭ*, 30 vols. in 15 (Cairo, 1906-13) and 'Ala' al-Din Ibn Mas'ud al-Kasani (d.1191), *Kitāb badā'ī' al-šanā'ī' fī tartīb al-šarā'ī'*, 7 vols. (Cairo, 1909-10).

On Maliki law, I consulted Muhammad bn Ahmad Ibn Rushd (d.1198) *Bidāyat al-mujtahid*, 2 vols. in 1 (Cairo, 1920), Khalil Ibn Ishaq al-Jundi (d.1365), *Al-Mukṭaṣar fī al-fiqh 'alā maḍhab al-Imām Mālik* (Paris 1900), transl. into French by M.Perron, *Précis de Jurisprudence Musulmane* (Paris, 1849) and three commentaries on the *Mukṭaṣar* : Muhammad bn Muhammad al-Hattab (d.1547), *Mawāhib al-jalīl li šarḥ mukṭaṣar Kalīl*, 6 vols. (Cairo, 1328-9), Ahmad bn Muhammad Abu al-Barakat al-Dardir (d.1786), *Al-Šarḥ al-kabīr 'alā mukṭaṣar Kalīl* (printed on margin of Dasuqi's *Hāšiyat*), Muhammad Ibn 'Arafa al-Dasuqi (d.1815), *Hāšiyat al-Dasūqī 'alā al-šarḥ al-kabīr*, 4 vols. (Cairo, 1911) and Ibn Abi Zaid al-Qairawani (d.996), *Al-Risāla*, Arabic text and French transl. by L.Bercher (Algiers, 1945).

For information on Shafi'i law not provided in the *Kitāb ādāb al-nikāḥ*, I resorted to Ghazali's *Al-Wajīz fī fiqh al-Imām al-Šāfi'ī*, 2 vols. in 1 (Cairo, 1899) and Muhammad Ibn Idris al-Shafi'i (d.820) *Kitāb al-Umm*, 7 vols. in 4 (Cairo, 1903-8).

On Imamiyyah law, I consulted Abu Talib Muhammad bn al-Hasan bn Yusuf bn al-Muttahar al-Hilli (d.1369), *Īdāḥ al-fawā'id* (Mu'assasa Isma'iliyan, 1969-70) and Muhammad Ibn Jamal al-Din Makki al-'Amali (d.1384-5), *Al-Lum'a al-dimašqiyya* (2nd ed., Qom, Iran, A.H.1412).

I made use of the following secondary sources: Yvon Linant de Bellefonds, *Traité de droit musulman comparé*, 2 vols. (Paris, 1965). Volume Two of Bellefonds work gives an extremely detailed and very useful account of the laws of marriage and divorce

according to the four schools of Sunni law. Less detailed but more comprehensive since it includes Shi'i law are two studies by A.M.J. Mughniyyah, "Marriage according to five schools of Islamic fiqh", Part 1-5, published in *al-Tawhid* (Tehran) from 1986 to 1988 and "Divorce according to five schools of Islamic Law", Part 1, in *al-Tawhid* (Tehran, 1988).

The following three works on the laws of marriage and divorce written by practising Muslim lawyers contain information on modern Arab Islamic legislation in the Middle East and North Africa, but also detailed information on traditional Islamic law (the *šariʿa*), on which the modern laws are based. Jamal J. Nasir discusses marriage and divorce as part of *The Islamic Law of personal status* (2nd. ed., Graham & Trotman, 1990), and focuses on these issues in *The status of women under Islamic law and Under Modern Islamic Legislation* (Graham & Trotman, 1990), a study of "the legal aspects of Islam and the modern Arab Islamic legislation regarding the rights and obligations of women." (from the introduction). Dawoud el-Alami discusses the marriage contract in *The Marriage Contract in Islamic Law* (Graham & Trotman, 1992).

I also consulted J.L. Esposito, *Women in Muslim Family Law* (Syracuse University Press, 1982), Chapters One "The Sources of Islamic Law" and Two "Classical Muslim Family Law"; G.H.A. Juynboll *Handbuch des Islamischen Gesetzes* (Leiden/Leipzig 1910), Chapter Seven on "Die Ehe" (Marriage), p.194-236; and Ahmed Shukri, *Muhammadian Law of Marriage and Divorce* (Columbia University Press, 1917).

Shahla Haeri's study on temporary marriage (*mutʿa*) in Shi'i Iran, *Law of Desire* (Syracuse Univ. Press, 1989), is the only book among my secondary sources with information on Shi'i laws of marriage and divorce.

The following articles have provided more detailed information on specific issues:

Hashim Kamali "Divorce and Women's rights: some Muslim Interpretations of Sura 2:228" in *The Muslim World*, 1984, no. 74, p.85-99; F.J. Ziadeh, "Equality (*kafa'ah*) in the Muslim Law of Marriage" in A.J.C.L., 1957, vol. vi, pp.503-17 and N.J.

Coulson "Regulation of Sexual Behaviour under Traditional Islamic Law", in *Society and the Sexes in Medieval Islam*, ed. 'Afaf Lutfi as-Sayyid Marsot (Undena Press, Malibu, California, 1979).

For information on the origins, the history and outlines of the system of Islamic law, I have relied on J.N.D.Anderson,*The Study of Islamic Law* (Ann Arbor, 1950), N.J. Coulson *A History of Islamic Law* (Edinburgh, 1964) and *Conflicts and Tensions in Islamic Jurisprudence* (Chicago University Press, 1969), G.H.A. Juynboll *Muslim Tradition -studies in chronology, provenance and authorship of early ḥadīṭ* (CUP, 1983), and Joseph Schacht *Origins of Muhammadan Jurisprudence* (Oxford, 1950) and *Introduction to Islamic Law* (Oxford, 1964).

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration.

The number of words do not exceed 80.000.

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NOTES ON TRANSLATION, DATES AND TRANSCRIPTION

All translations in the text are my own, unless otherwise indicated, and the references are to the Arabic originals.

Unless otherwise indicated, dates in the text are given according to the Gregorian calendar (A.D.). Hijri dates (A.H.) refer to *hijrī qamarī*, except in one case (A.H.s.) referring to *hijrī shamsī*. Dates given in brackets immediately following the name of a person denote the date of his death.

I followed the system of transcription used by Hans Wehr in the *Dictionary of Modern Written Arabic*. Both Arabic names and titles appear in transcription in the bibliography, but only titles are transcribed in the text. Words which have become common in English, such as Quran, are not transcribed, but less common words, such as *hadīṭ*, *sunna* and *muṛīd*, are. All transcribed words in the text and all titles appear in *italics*.

INTRODUCTION

In contrast to Christianity, early Islam rejected monasticism. Whereas monasticism has been a central institution in the Christian tradition, the Quran denounces it as a Christian invention¹ and the Prophet made it explicit in word and deed that there was to be no monkery in Islam. Ample evidence for the early Muslim attitude can be found in the ninth century collection of religious and secular traditions, the *Kitāb ʿuyūn al-aḵbār* ("Sources of Narratives") by Ibn Qutaiba (d.889)². The chapter on the "Encouragement of Marriage and Condemnation of Celibacy"³ (*al-ḥ add ʿalā al-nikāh wa ḍamm al-tabattul*) contains the following Prophetic traditions (*ḥadīth*)⁴: "There is no monkery (*rahbāniyya*), no celibacy (*tabattul*), and no hermitage (*siyāḥa*) in Islam."⁵ And Abu Talib al-Makki (d.998), in his Sufi treatise *Qūt al-qulūb fī muʿāmalat al-maḥbūb* ("Nourishment for the Hearts"), quotes the Prophet as having said: "God curses the ascetics among the men who say 'we will not marry', and he curses the ascetics among the women who say 'we will not marry'."⁶ In another chapter of the *Kitāb ʿuyūn al-aḵbār*, significantly called "Moderation in religion"⁷ (*al-ṭawassuṭ fī al-dīn*), Ibn Qutaiba relates that the Prophet is reported to have said: "God has sent me with simple, true Islam (*al-ḥanīfiyya al-sahla*), not with the innovation of monasticism (*al-rahbāniyya al-mubtadaʿa*). My example (*sunnatī*)⁸ is to pray and to sleep, to eat and to fast; whoever dislikes my example is not one of us."⁹

Within early Christianity the notion developed that true worship of God requires ascetic isolation, including separation from ordinary society combined with abstention

¹M.Pickthall, *The Glorious Koran* (Mentor Books nd.) Sura 57, Verse 27 "But monasticism they invented - We ordained it not for them -".

²Ibn Qutaiba, *Kitāb ʿuyūn al-aḵbār*, 4 vols (Cairo, 1925-30).

³ibid., vol.4, p.18.

⁴lit.: report, account. Used in the specific sense of being "an account of what the Prophet said or did, or of his tacit approval of something said or done in his presence" J.Robson, "Hadith", *Encyclopedia of Islam*, 2nd. ed. (Leiden: E.J.Brill), vol.3, p .23 .

⁵ibid.

⁶Abu Talib al-Makki, *Qūt al-qulūb fī muʿāmalat al-maḥbūb*, 2 vols. in 1 (Cairo, 1893), vol.2, p.243.

⁷Ibn Qutaiba, *Kitāb ʿuyūn al-aḵbār*, vol. 1, p. 325.

⁸"*sunna* (custom) refers to a normative custom of the Prophet or of the early community". J.Robson, "Hadith", *Encyclopedia of Islam*, 2nd. ed. (Leiden: E.J.Brill), vol.3, p .23 .

⁹ibid., p.327.

from the pleasures of the flesh, especially sex. The great majority of early Muslims rejected this separation. They saw no need for the believer to withdraw from society in order to worship God. And they equally rejected the notion that true religious devotion was incompatible with a normal sex life. They saw no reason why religious persons should not marry, and marriage and sex were not seen as standing in the way of religious devotion. The Christians were able to view the monastic and celibate life as the highest ideal, and the Muslims seemed firmly committed to marriage. Accordingly, one would not expect to find within Islam anything similar to the Christian ideas on celibacy or sexuality.

Nevertheless, from the early days of Islam we find a small number of Muslims expressing views on marriage and celibacy which are reminiscent of the Christian attitude. These men and women were ascetics, and their opinions are reflected in the following statements¹⁰. 'Ali Ibn 'Uthman al-Hujwiri (d.approx.1071), author of the oldest Persian treatise on Sufism, summed up this attitude elegantly when he wrote: "Sufism was founded on celibacy; the introduction of marriage brought about a change (for the worse)."¹¹ Abu Sulaiman al-Darani (d.830), an ascetic from Syria¹², is reported to have said: "The married man never knows the sweetness of prayer and the tranquility of the heart which the celibate knows."¹³ and he also said: "To cope without women is better than to cope with them, but to cope with them is better than to suffer the fire of Hell."¹⁴ For Ibrahim Ibn Adham (d.790), one of the most prominent Sufis of the 8th century (2nd century A.H) who became "one of the proverbial examples of true

¹⁰Several scholars have commented on the influence of Christian ascetic principles on early Sufism. In *Early Mysticism in the Near and Middle East*, Margaret Smith stated: "So while the Christian Near and Middle East was rapidly Islamised, Islam, in its turn, became, to some extent, Christianised, and this influence showed itself most plainly in the rise and development of Islamic Mysticism." (ie. Sufism) (p.255). Further "it was in respect of the[] ascetical practices, first and foremost, that we find Sufism influenced by Christian practice." (p.245). (Margaret Smith, *Studies in Early Mysticism in the Near and Middle East* (London, 1931)) In *Islamische Mystik*, Tor Andrae quoted many stories, collected from Islamic literary works, in which Christian monks are portrayed as teachers to Muslim ascetics. He commented: "The discourse between Muslims and Christian monks [as recorded in the literature] [] proves that indeed, during the first centuries, Islam dared to learn from Christian ascetic piety (p.18)." (Tor Andrae, *Islamische Mystik* (2nd. ed.Kohlhammer, 1980)). Also see Annemarie Schimmel, *Mystical Dimensions of Islam* (University of North Carolina Press, 1975), p.10, pp.34-5.

¹¹'Ali Ibn 'Uthman al-Hujwiri, *Kašf al-mahjūb*, transl. R.A. Nicholson (Leiden, London 1911), p.364.

¹²A.Schimmel, *Mystical Dimensions of Islam*; index.

¹³Abu Hamid al-Ghazali, *Ihyā' 'ulūm al-dīn*, 5 vols. (Beirut, Dar al-Ma'arifa, nd.), vol.2, p.24.

¹⁴ibid.; alt: "To be able to do without them is better than dealing with them, but to deal with them is better than to endure the fire of Hell."

poverty, abstinence, and trust in God "¹⁵, a family meant destruction: "When a man marries he embarks on a ship, and when a child is born he suffers shipwreck."¹⁶ And Sufyan al-Thauri (d.778), a celebrated theologian, traditionist and ascetic of the 8th century¹⁷ exclaimed: "How nice is the life of a bachelor who owns his own key - even if the house is drafty, there is no screaming and shouting."¹⁸ Contrary to common perception, a conflict existed in Muslim society between supporters and adversaries of marriage.

The *Kitāb ādāb al-nikāḥ* of Abu Hamid al-Ghazali (d.1111) addressed this conflict, describing it as follows: "Religious scholars (*ʿulamāʾ*) have disagreed on the value of marriage. Some have regarded marriage so highly that they maintained that it is even better than (or 'placed it above') solitary devotion to God (*al-takallī liʿibādat allāh*). Others, while acknowledging its merits, preferred solitary devotion, but only as long as the believer's soul did not crave sexual intercourse to the point that his desire disturbed him and urged him to have sex. Finally others said that in times like ours it is best to avoid marriage [altogether]. Marriage used to have its merit in the past, when earning a living was not perilous and women's morals not blameworthy¹⁹." ²⁰. It is particularly rewarding to investigate marriage at a time when it is being questioned: not only does the discussion shed light on the origins of this central Muslim institution, it also reflects the attitudes of a certain age towards one of the pillars of Muslim society. Moreover, the institution of marriage was questioned not by a member of a minority movement, but by one of the leading members of orthodox Muslim society at the time.

Abu Hamid Muhammad bn Muhammad al-Tusi al-Ghazali has been called "the greatest Muslim after Muhammad"²¹, "the greatest religious teacher in Islam"²² and "an

¹⁵A.Schimmel, *Mystical Dimensions of Islam*, p.37.

¹⁶Abu Nasr al-Sarraj, *Kitāb al-lumaʿ fī al-taṣawwuf*, ed. R.A.Nicholson (London,1963), p.199. A. Schimmel, *Mystical Dimensions of Islam*, p.37.

¹⁷M.Plessner, "Sufyan al-Thawri", *Encyclopedia of Islam*, 1st ed. (Leiden:E.J.Brill, 1934), vol.4, pp.500-2.

¹⁸Ghazali, *Iḥyāʾ*, vol.2, p.34.

¹⁹alternative: but they have disappeared with the deterioration in economic circumstances and women's morals.

²⁰Ghazali, *Iḥyāʾ*, vol.2, p. 21.

²¹A.Schimmel, *Mystical Dimensions of Islam*, p.91.

²²M.Smith, *Al-Ghazali the Mystic* (London, 1944); p.10.

outstanding theologian, jurist, original thinker, mystic and religious reformer"²³. He was born in Tus, in Khurasan, in 1058, and already attained fame in his own lifetime: having received his early training as a jurist and theologian in Tus, Jurjan and Naysabur, Ghazali moved to Baghdad in 1085, where, in 1091, the Seldjuk vizier Nizam al-Mulk appointed him professor at his newly-founded Nizamiyya *madras* ^a²⁴. For four years, Ghazali was one of the most prominent men in Baghdad, and he drew large crowds to his lectures. But following a nervous breakdown in 1095, Ghazali abandoned his teaching career and left Baghdad to take up the life of a poor Sufi. He spent the following eleven years in Damascus, Jerusalem, Hebron and on pilgrimage to Mecca and Medina, before returning to live and teach in Tus, where he died in 1111.

The *Kitāb ādāb al-nikāḥ* is part of Ghazali's most famous work, the *Iḥyā' 'ulūm al-dīn* ("The Revival of the Religious Sciences"), composed during his wandering years following the departure from Baghdad. The *Iḥyā'* is considered one of the most important religious works in Islam, providing "a complete guide for the devout Muslim to every aspect of the religious life - worship and devotional practices, conduct in daily life, the purification of the heart, and advance along the mystic way."²⁵ Even within Ghazali's own lifetime, the *Iḥyā'* received much attention as well as criticism, to which Ghazali responded in a pamphlet, the *Kitāb al-implā' fī iškālāt al-Iḥyā'*.²⁶ Two commentaries on the *Iḥyā'* were later composed, the *Mahajjat al-baidā' fī tahdīb al-Iḥyā'* by the Shi'i scholar Muhammad bn Murtada al-Kashani (d.1680)²⁷ and the *Ithāf al-sāda al-muttaqīn bi šarḥ Iḥyā' 'ulūm al-dīn* by al-

²³W.Montgomery Watt, "Ghazali", *Encyclopedia of Islam*, 2nd ed.(Leiden: E.J.Brill, 1965) vol.2, pp.1038-40.

²⁴*madras*: Muslim college, Muslim institution of learning; for a detailed study of the history of Muslim institutions of learning see George Makdisi, *The Rise of Colleges* (Edinburgh University Press, 1981).

²⁵"Ghazali", *Encyclopedia of Islam*.

²⁶Abu Hamid al-Ghazali, *Kitāb al-implā' fī iškālāt al-Iḥyā'* in *Iḥyā' 'ulūm al-dīn*, 5 vols. (Beirut, Dar al-Ma'rifa, nd.) vol.5.

²⁷Muhammad bn Murtada al-Kashani, known as Muhsin al-Fayd. He grew up in Qom (Iran), then moved to Qashan, and later to Shiraz, where he studied under two famous scholars of his age. He died in Qashan in 1091 A.H. at the age of 84. His tomb attracts visitors and is well-known. (From the introduction of the *Mahajjat al-baidā' fī tahdīb al-Iḥyā'*, 8 vols. (Tehran, 1339-42 A.H.s), vol.1, p.22; reference to Muhsin al Fayd in Hossein Modarressi Tabataba'i, *An Introduction to Shi'i Law - a bibliographical study* (Ithaca Press, London, 1984), p.223, index.

Murtada al-Zabidi (d.1790), the author of one of the most important dictionaries of Arabic, the *Tāj al-ʿarūs*.²⁸

Ghazali's discussion of marriage and celibacy in the *Kitāb ādāb al-nikāḥ* is infused with a clear stated view of the nature and purpose of human sexuality. For Ghazali, a healthy, balanced life included sex, which, in the Muslim context, must take place within marriage (or concubinage). Ghazali's views on sexuality expressed the attitude towards sexuality prevalent in Islamic jurisprudence (*fiqh*). Both the Quran and the Prophet show a positive attitude towards (legitimate) sex as an integral part of the god-given human make up. As a result, Muslim jurists discussed all aspects of human sexuality, namely sexual desire itself, legal and illegal sexual relations and practices, birth control and the concept of romantic love (romantic love was believed to be the result of excessive lust).²⁹

But the discussion of sexuality was not restricted to jurisprudence: aspects of sexuality were openly and explicitly discussed in many different kinds of Muslim literature. Muslim scholars - theologians, jurists, doctors, men of literature - throughout the ages have treated sexual desire as an integral part of the human constitution and an entirely normal and desirable part of life. Sexual desire was appreciated as much for the role it plays in procreation as for its pleasurable aspects.

²⁸Abu 'l-Faid Muhammad Murtada bn Muhammad bn Muhammad bn 'Abdurrazzaq al-Husaini al-Zabidi al-Hanafi. Born 1732/A.H.1145 in Bilgram near Qannaugh in India, he lived for some time in Zabid in Yemen, a significant centre of learning at the time. He travelled extensively for the purpose of study, and then settled in Cairo in 1733/A.H.1167. al-Murtada was famous because of his reputation for having the power of intercession, and through his writings. These included works on *hadīth*, a great Arabic lexicon, the *Tāj al-ʿarūs*, and the most important commentary on Ghazali's *Iḥyāʾ*, the *Iḥāf al-sāda al-muttaqīn bi šarḥ Iḥyāʾ ʿulūm al-dīn* (C.Brockelmann, *Geschichte der Arabischen Literatur*, 2 vols. (2nd. ed. Leiden, 1943-9) vol.2, p.371; Albert Hourani, *A History of the Arab Peoples* (Belknap, 1991) index).

²⁹Abd al-Wahhab al-Sha'rani (d.1565) *Kitāb kašf al-ġumma ʿan jamīʿ al-umma*, 2 vols. in 1 (Cairo, A.H.1303): The "Book on Marriage" (*Kitāb al-nikāḥ*, vol.2, p.44-98), Abu al-Faraj 'Abd al-Rahman Ibn 'Ali Ibn al-Jauzi (d.1201), *Kitāb al-ḥikām al-nisāʾ* (Beirut, 1981), Muhammad Ibn Abi Bakr al-Zaur'i Ibn Qayyim al-Jawziyya (d.1350), *al-Jawāb al-kāfi liman saʿala ʿan al-dawāʾ al-šāfiʿi* (Riyadh, 1972) and Muhammad Ibn Muhammad al-'Abdari al-Fasi Ibn al-Hajj (d.1336-7), *al-Madkhal*, 4 vols. (2nd.ed., Beirut, 1972). For a study of the Islamic discussion on contraception see Basim Musallam, *Sex and Society in Islam* (CUP, 1983). For a study of the writings on love of leading Hanbali jurists see Joseph N. Bell, *Love Theory in Later Hanbalite Islam* (State University of New York Press, 1979). For an assessment of the sacred and special role Islam ascribed to sexuality see Abdelwahhab Bouhdiba, *Sexuality in Islam* (RKP, 1985).

SEX AS A NORMAL PART OF LIFE: EXAMPLES FROM MUSLIM LITERATURE:

From a medical point of view, a concern for sexuality was important for two reasons: procreation and individual health. Mediaeval Muslim physicians considered sexual intercourse an important part of a healthy life, for both men and women were thought to need sexual intercourse to prevent the accumulation of semen in the body (women were believed to produce semen, too). According to the physicians, accumulation of semen had a poisonous effect on the body, with adverse affects on a person's health.³⁰

In the *Kitāb al-qānūn fī al-ṭibb* ("The Canon of Medicine"), one of the most important medical treatises of pre-modern times, Abu 'Ali al-Husain Ibn Ali Ibn Sina (d.1037) provided information on the anatomy of the procreative organs, their malformation and malfunctions and how these could be corrected, information on the reasons for impotence or the loss of sexual appetite and how they could be cured, information on lifestyle and diet considered conducive to a healthy sex life and guidelines for moderate sexual behaviour. He also provided information on contraception and abortion, important for the protection of the lives of women who could be harmed by childbirth.

Ibn Sina stressed the importance of sexual pleasure, particularly for the woman, since he believed that, for a child to be conceived, both male and female semen had to mingle in the womb. Like men, women were understood to emit semen during orgasm. But mediaeval physicians (and other mediaeval Muslim authors) were well aware of the difference between male and female sexuality - they knew that, in most cases, women required more time and attention to reach a climax. Therefore the physicians encouraged men to pay particular attention to female arousal and to aim for simultaneous orgasm, since it would guarantee the mingling of the seed. Part of the physician's duty was to give advice on methods which men could use to stimulate their partners.³¹

So female sexual pleasure was considered essential for procreation, but it was important to pay attention to female sexual satisfaction for additional reasons. Ibn Sina

³⁰Ibn Sina, *Kitāb al-qānūn fī al-ṭibb*, 3 vols. (reprint of Cairo edition of 1877, Dar Sadir, Beirut, nd.), vol. 2, Book III, pp.534-5.

³¹ibid., p.549-50, 565.

warned his reader that if the woman remained unsatisfied, she would go and look for a more compatible partner, male or female!³² In contrast, an important tenet of Christian sexual ethics was the suppression of pleasurable sensation during the sexual act.³³

Information about sex and matters relating to it formed part of the general knowledge expected of an educated Muslim, and encyclopedias of general knowledge from the 9th, the 11th and the 14th century all refer to this subject. Ahmad bn 'Abd al-Wahhab al-Nuwairi (d.1332), author of the *Nihāyat al-arab fī funūn al-adab* states in the preface to his work that "he wished to sum up in his encyclopedia all the knowledge that was indispensable for a first class *kātib*³⁴."³⁵ But the references to sex in the *Nihāyat al-arab fī funūn al-adab*, in the *Kitāb 'uyūn al-aḳbār* of Ibn Qutaiba and the *Muḥāḍarāt al-udabā'* ("Discourse of the Literati") of al-Raghib al-Isfahani (d.1108) only partly fulfil an educational function - they are also meant to entertain the reader. Frequently, mention of sex occurs in the form of *muḥūn*, a literary genre which describes sexual situations in explicit, often crude language in a witty, playful and humorous style. Put simply, the erudition of an educated man included erotic material.

Arabic belles lettres (*adab*) also included a special type which was entirely devoted to sexuality - erotica. These were practical, pseudo-medical guidebooks on sex with technically detailed information on human anatomy, love techniques, various love positions, medical advice on ailments related to sexual performance and contraception. They also included phantastic, popular stories about sexual exploits, erotic poetry and collections of proverbs on the subject of love. Among the most popular books of this genre were the *al-Rauḍ al-ʿātir fī nuzhat al-ḳāṭir* ("The Perfumed Garden for the Recreation of the Soul") by al-Shaikh Sidi Muhammad al-Nafzawi (15/16th century),

³²ibid., p.550.

³³Uta Ranke-Heinemann, *Eunuchs for Heaven* (André Deutsch, 1990); "Augustine" (pp. 62-84); Some mediaeval Christian theologians even "held [sexual] intercourse for delight or pleasure or lust as [a] mortal [sin]." John T. Noonan, *Contraception, A History of Its Treatment by the Catholic Theologians and Canonists* (Belknap Press, Harvard, 1966), p.250.

³⁴literally writer or scribe ; "a term which was used in the Arab-Islamic world for every person whose role or function consisted of writing or drafting official letters or administrative documents" (B.Fragner, "Katib", *Encyclopedia of Islam*, 2nd. ed. (Leiden:E.J.Brill, 1978), who could also be a member of the important class of state secretaries.

³⁵Ign. Kratschkowsky, "al-Nuwairi", *Encyclopedia of Islam*, 1st ed. (Leiden: E.J. Brill, 1936), vol.3, pp. 968-9.

Rujūʿ al-šaiḳ ilā šibāh fī al-qūwa ʿalā al-bāh ("How An Old Man Can Regain His Youth") by Ahmad Ibn Yusuf al-Tifashi (d.1253) and several erotic treatises by Jalal al-Din al-Suyuti (d.1505).

Significant in the comparative context is not so much the fact that such books were composed by Muslims in a Muslim society, but the extent to which this literature was embedded in the religious discourse. "Pious souls, grave lawyers, eminent theologians, worthy qadis and venerable sheikhs devoted themselves to the study of eroticism; none of them could have conscientious scruples, for none of them was contravening either the letter or the spirit of the Canonic teachings. Muhammad himself set the example when he encouraged his disciples to venerate the flesh, to attend to the preliminaries of love making, to sexual play and phantasy. [] It is a pious duty for a good Muslim to help all other members of the Umma to become aware of the art of pleasure. An author who deals with questions of eroticism, perfumery, hygiene and beauty has no reason to blush when approaching questions that are neither more nor less noble than grammar, prosody, canon law or history."³⁶

Suyuti, one of the most prolific authors of mediaeval Islam, was a leading religious scholar in 15th century Egypt who also wrote books on the Quran, the Traditions, law, philosophy, history, philology and rhetoric. Tifashi understood his erotic treatise as a contribution to the fulfilment of a Prophetic command: "With the composition of this book I do not intend to encourage sin or to help the sinner, nor do I wish to legalize that which God has prohibited. Rather, I wish to help the one whose sexual desire is too weak even for legitimate intercourse. Because intercourse, as the cause of procreation, populates the world, and the Prophet said 'Marry and procreate so that I can boast of your numbers on the Day of Resurrection.'"³⁷ Nafzawi opened *Al-Raud al-ʿātir* with a eulogy on the beauty of the body, particularly the female body, and the pleasures of intercourse. His praise is to God who bestowed these gifts on his servants, and the introduction is interspersed with statements such as "Praise be to God", "gifts of God",

³⁶A.Bouhdiba, *Sexuality in Islam*; p.140.

³⁷Ahmad al-Tifashi, *Rujūʿ al-šaiḳ ilā šibāh fī al-qūwa ʿalā al-bāh* (Cairo, 1891-2), p.2.

"testifying to the might and the wisdom of God", "the Almighty, the Master of the Universe has bestowed", and ends with the *šahāda*, the Muslim confession of faith.³⁸

To the extent that sex was part of the religious discourse, religion was part of the sexual discourse. This is most obvious in the literary genre of *mujūn*. In chapters fifteen "On Marriage, Spouses, Divorce, Chastity and Cuckoldry" (*Fī al-tazwīj wa al-azwāj wa al-ṭalāq wa al-ʿiffa wa al-tadayyut*) and sixteen "On Impudence and Folly" (*Fī al-mujūn wa al-sakf*) of the *Muḥāḍarāt al-udabāʾ*³⁹ of Isfahani, Quranic verses and Prophetic traditions appear side by side or as part of the crudest, most explicit sexual jokes. Frequently, a matter is presented from three angles: the Quranic rule, the Prophet's teachings and finally the popular practice, which is related in frank, often vulgar language mixed with a great amount of humour and irony. Nuwairi introduced his chapter "On *Mujūn*, Anecdotes, Jokes and Witticism" (*Fī al-mujūn wa al-nawādir wa al-fukāhāt wa al-mulaḥ*) as follows: "This kind of literature provides relaxation for the weary and excitement for the bored. People (lit.: *nufūs*) cannot perform duties continuously, but must, for the sake of repose, be distracted. If they are occasionally entertained with funny stories and indulged with jokes, they will return to work with renewed energy.[] The Prophet said 'Rest your minds every now and then, for if they get exhausted, they become inattentive (lit.: blind).'"³⁹ The chapter opens with jokes from the Prophet and his companions. Even if these are not explicitly sexual, they occur in a chapter that is full of outrageous erotic stories.

THE CHRISTIAN MODEL

A large proportion of the literary output of mediaeval European Christian society was produced by monks and clerics, and their writings unanimously condemned sexuality as sinful.⁴⁰ Christian theologians regarded the complete suppression of sexual desire as

³⁸Muhammad Ibn Muhammad al-Nafzawi, *al-Rauḍ al-ʿāṭir fī nuzhat al-kāṭir* (Tunis, Maktabat al-Manar, nd.) English translation by Sir Richard Burton, *The Perfumed Garden of the Sheikh Nafzawi* (Castle Books, New York, 1964), pp.7-8.

³⁹Shihab al-Din Ahmad bn 'Abd al-Wahhab al-Nuwairi, *Nihāyat al-arab fī funūn al-adab*, 15 vols. in 7 (Cairo, 1923-43), vol. 4, p.1.

⁴⁰see, for example, Uta Ranke-Heinemann, *Eunuchs for Heaven*; Karlheinz Deschner, *Das Kreuz mit der Kirche-Eine Sexualgeschichte des Christentums* (Heyne, 1990).

an essential aim in the good religious life. In the development of Christian sexual morality the ideas on sexuality formulated by St. Augustine (d. 430) were of cardinal importance. Haunted by "sexual pessimism"⁴¹, he elaborated the ideal of lifelong sexual abstinence. His sexual pessimism was based on a view of sexual desire as the divine punishment for the act of human disobedience that led to the Fall. Man's rebellion was punished with the rebellion of his passions, particularly sexual passion. From then on, the body would refuse to obey the mind, so that man would forever be reminded of his disobedience to God. St. Augustine used this idea further to establish the link between sexual desire and the transmission of original sin. Since sexual desire was a form of divine punishment for disobedience, the sensation of sexual pleasure during intercourse transmitted the stain of original disobedience, ie. original sin, from one generation to another. This perception of sexual desire as inherently bad led to the conclusion that the sexual act could only be tolerated for one reason - procreation. Procreation, however, could only legitimately take place within marriage, where every conjugal act had to be engaged in for procreative purposes. At the same time, sexual pleasure and enjoyment had to be kept to an absolute minimum.

The secular, vernacular literature which developed in European Christian society from the eleventh century onwards⁴², which addressed sexuality in a more open and lighthearted manner and did not adopt the hostile attitudes of the theologians, developed alongside their writings and was frequently subject to religious condemnation.⁴³ Pre-modern European Christian society never achieved the integration of religious discourse and popular discourse on the subject of sex which was taken for granted in the Islamic context.

⁴¹U. Ranke-Heinemann, *Eunuchs for Heaven*; expression used throughout.

⁴²such as the minnesong, epic poetry, lyric poetry and passionplays. see: Alfred Götze, "Ausserkirchliche abendländische Literatur des Mittelalters" in *Die Religion in Geschichte und Gegenwart*, Band I - V (Tübingen 1909-13), vol.3, pp.2243-55; Joachim Bumke, *Höfische Kultur-Literatur und Gesellschaft im hohen Mittelalter*, 2 vols. (dtv, 1986), Chapter on "Höfische Liebe" (Courtly Love), vol.2, pp.503- 582; Ralf Johannsmeier, *Spielmann, Schalk und Scharlatan* (Rowohlt, 1984).

⁴³J. Bumke, *Höfische Kultur*, vol.2, p.528; R. Johannsmeier, *Spielmann, Schalk und Sharlatan*.

THE EXAMPLE OF CONTRACEPTION:

Appreciation of both the procreative and the pleasurable aspects of sexual desire allowed Muslim jurists to permit contraception. In *Sex and Society in Islam*, B.Musallam has shown how this basic legal permission translated into acceptance of contraception as an integral part of mediaeval Muslim culture⁴⁴. Muslim writers from many walks of life freely discussed birth control and exchanged recipes and information about the reliability - or lack thereof⁴⁵- of certain contraceptive methods. Reference to contraception as well as abortion, sometimes in form of a special chapter, is found in jurisprudence itself, but also in medical writings, materia medica, erotic literature and encyclopedias of knowledge. The example of the Hanbali jurist Ibn al-Jawzi shows that even the most orthodox Muslim jurists had no qualms about disseminating contraceptive knowledge.⁴⁶

For Christian theologians since St. Augustine, the only legitimate function of sexual desire was procreation. Accordingly, they strongly prohibited contraception as interference with the only legitimation of the sexual act. "In the world of the late Empire known to St. Jerome and St. Augustine, in the Ostrogothic Arles of Bishop Caesarius and the Suevian Braga of Bishop Martin, in the Paris of St. Albert and St. Thomas, in the Renaissance Rome of Sixtus V and the Renaissance Milan of St. Charles Boromeo, in the Naples of St Alphonsus Loguori and the Liège of Charles Billuart, in the Philadelphia of Bishop Kenrick, and in the Bombay of Cardinal Gracias, the teachers of the Church have taught without hesitation or variation that certain acts preventing procreation are gravely sinful. No Catholic theologian has ever taught, 'Contraception is a good act.' The teaching on contraception is clear and apparently fixed for ever."⁴⁷ Condemnation of the use of contraception did not altogether prevent the matter from being mentioned. However, in contrast to the abundance of information on birth control in Muslim society, reference in Christian circles was scarce, veiled and imprecise.

⁴⁴often a direct reference to the religious permission of contraception was made.

⁴⁵Ibn Qayyim al-Jawziyya said: "More than one among those I trust have told me that his wife became pregnant even though he had been practising withdrawal". B.Musallam, *Sex and Society in Islam* , p.19.

⁴⁶ibid., pp.94-5.

⁴⁷J.T.Noonan, *Contraception*, p.6.

Christian authors who copied information on birth control from Ibn Sina's *Kitāb al-qānūn fī al-ṭibb* disguised the nature of the material: in the *Qānūn*, information on contraception and abortion is clearly designated as such⁴⁸; in the works of Albert the Great (d.1280)⁴⁹, John of Gaddesden (d.1336)⁵⁰ and Magnino⁵¹, "contraceptive information is presented not as an aid to contraception, but in connection with the causes of sterility or the properties of plants."⁵² Whereas the manuals of druggists and herbalists in Muslim lands contained numerous contraceptive recipes⁵³, "contraceptives were not an essential stock in trade of [European] apothecaries".⁵⁴ European legal treatises "show slight awareness of contraception."⁵⁵ And while Muslim popular literature liberally spread knowledge of contraceptive methods, the most important English literary work of the Middle Ages, Chaucer's *Canterbury Tales*, equated the use of contraception with manslaughter.⁵⁶

⁴⁸Ibn Sina, *Al-Qanun*, vol.2, Book III, p. 575-6: "How to administer abortion and extract a dead foetus", p. 579: "The Prevention of Pregnancy (*man' al-ḥabal*)". And "in the pharmacopoeia which composes Book II of the Canon, Ibn Sina lists the contraceptive properties of several plants" J.T.Noonan, *Contraception*, p.201. (Ibn Sina, *Al-Qanun*, vol.1, Book II, pp.222-467).

⁴⁹J.T.Noonan, *Contraception*, p.205.

⁵⁰ibid., p.208.

⁵¹ibid., p.209

⁵²ibid., p.212.

⁵³B.Musallam, *Sex and Society*, pp.72-74.

⁵⁴J.T.Noonan, *Contraception*, p.218.

⁵⁵ibid., p.216.

⁵⁶ibid., p.215.

CHAPTER ONE: FOOD AND SEX

The discussion of marriage and celibacy in the *Kitāb ādāb al-nikāḥ* is informed by a certain view of the nature and purpose of human sexuality. Ghazali discussed sexual desire twice in the *Iḥyā' 'ulūm al-dīn*. In both cases, the discussion of sexual desire is preceded by a discussion of the desire for food. For Ghazali, the desire for sex was of the same kind as the desire for food: an entirely natural and primarily desirable part of the human constitution. But more importantly, Ghazali considered the desire for food to be the origin of all desires, including the desire for sex.

The *Iḥyā' 'ulūm al-dīn* is divided into four quarters (*rub'*): The Acts of Worship (*'ibādāt*), The Norms of Daily Life (*'ādāt*), The Ways to Perdition (*muhlikāt*), The Ways to Salvation (*munjiyāt*).¹ Each quarter in turn consists of ten "books" (*kitāb*). The first parallel discussion of sex and food occurs in the second quarter of the *Iḥyā'* which deals with the norms of daily life (*'ādāt*). In this part of the *Iḥyā'*, Ghazali placed the emphasis on Quranic and Prophetic teachings on food and sex within the social context. The greater part of the "Book on the Manners of Eating" (*Kitāb ādāb al-akl*) is concerned with eating as a social activity; it gives instructions on the proper manners to be observed by someone eating in company as well as the proper treatment of guests. Equally, the "Book on the Manners of Marriage" (*Kitāb ādāb al-nikāḥ*) is devoted to sex within its social context, namely marriage, and contains instructions on how to contract marriage and how to achieve marital harmony.

The second parallel discussion of food and sex occurs in the third quarter of the *Iḥyā'*, entitled "The Ways to Perdition", in the "Book on the Controlling of the Two Desires" (*Kitāb kasr al-šahwatain*). Whereas the first two quarters of the *Iḥyā'* are concerned with man in his social environment, the second two quarters deal exclusively with his relationship to God. In the latter context, it is not enough for the believer to know how to behave properly, but it becomes essential for him to understand why.

¹from K.Nahamura, *Al-Ghazali - Invocations and Supplications* (The Islamic Texts Society, Cambridge 1990).

THE IMPORTANCE OF THE SOUL

Ghazali argued that the way to personal salvation was to resolve the conflict between the demands of God and the demands of the individual self. The individual self, the soul (*al-nafs*), is the seat of passion and man's most unruly and disruptive part. Ghazali called it "a combative enemy man must fight"². The self demands satisfaction, while God demands obedience and concentration on Him. He is jealous and permits no idolatry. The essence of the Islamic faith is encapsulated in the formula "there is no god but God" (*lā ilāha illā allāh*). Essentially, this implies that the believer must focus his undivided love and attention on God and eliminate all forms of distractions that could divert his attention from Him. This is what following the straight path, *al-ṣirāṭ al-mustaqīm*³, means.

Ghazali believed that the conflict between the demands of God and the individual self could be resolved by following the ethical principle of moderation (*iṭidal*), which he explicitly identified with *al-ṣirāṭ al-mustaqīm*⁴. A person who observes moderation in all areas of human conduct establishes in himself an emotional and physical equilibrium which allows his full concentration on the divine. Ghazali called this state of equilibrium *al-waṣaṭ*, the mean.⁵

The concept of the mean originates in Greek moral philosophy. Aristotle was the first to elaborate this idea in his chapter on moral virtue in the *Nichomachean Ethics*: "Virtue is a state of character concerned with choice, lying in a mean relative to us, this being determined by a rational principle by which a man of practical wisdom would determine it."⁶ The mean is the ethical ideal for all forms of human conduct governed by desire and emotion, such as anger, fear, physical pleasure, appetite, pride and ambition. It is the point of moderation between two forms of extreme behaviour,

²Ghazali, *Iḥyāʾ*, vol.3, p.65.

³ from *al-Fātiḥa*, the opening chapter of the Quran. M.Pickthall, *The Glorious Koran*, Sura 1, Verse 5-7: "Show us the straight path. The path of those whom Thou hast favoured. Not (the path) of those who earn Thine anger, nor of those who go astray ."

⁴Ghazali, *Iḥyāʾ*, vol.3, p.63.

⁵ibid.

⁶Richard McKeon, *The Nichomachean Ethics in The Basic Works of Aristotle* (New York, 1941), p.959.

exaggeration and neglect.⁷ Moral philosophy sees the mean as similar to the point of equilibrium on a pair of scales. Equilibrium is established when both scales carry the same weight, just as the mean is found when two excessive forms of behaviour resulting from the same emotion are poised to a level of moderation.

However, whereas the point of equilibrium on a pair of scales is unequivocal, the behavioural mean is never a fixed entity. The measure^{of} whether passions and actions are in excess, in deficiency or in the mean is totally subjective and relative. How, then, is a man to know the mean? "Moral virtue is acquired by repetition of virtuous acts; it comes about as a result of habit."⁸ Careful upbringing endows a man with practical wisdom that enables him to choose what is right. Thus to find and behave according to the mean is a sign of moral virtue.

Ghazali appropriated the Greek philosophical notion of the mean and adapted it to the search for the mean in the religious context by equating it with the straight path "*al-ṣirāṭ al-mustaqīm, aḥnī, al-waṣaṭ*".⁹ For Ghazali, the mean was that point of equilibrium in human behaviour furthest removed from both possible extremes.¹⁰ To follow the principle of moderation is more difficult in some things than in others. Ghazali observed that the appetite for food and the appetite for sex were the principal sources of human selfishness and disobedience, and that it was here that man was most likely to behave excessively. However, neither desire is therefore considered inherently evil; on the contrary, both desires are essential for human survival - individual and collective respectively -, God himself deliberately created them as strong and irresistible as they are, and they must therefore be inherently good. But God set clear limits concerning the use of sex and food and prohibited uncontrolled indulgence. The area of human responsibility is ^{the reconciliation of} ~~to reconcile~~ personal desire with the limits imposed by God.

⁷Thus anger should be controlled; it should never reach the level of irascibility, but a man should react with a certain amount of indignation if treated unjustly. Equally, bravery is a noble sentiment; however, it should not incite a man to rash, foolhardy behaviour, nor should he shun a taxing situation because of cowardice.

⁸R.McKeon, *The Nichomachean Ethics*, p.952.

⁹Ghazali, *Iḥyāʾ*, vol.3, p.63.

¹⁰ibid.p.63, p.96; on p.96, Ghazali gives the following example: Man searching for the mean between two opposing extremes is like an ant who finds herself encircled by a ring of fire. The ant tries to run away from the heat of the fire, but cannot escape from the circle. In the end, she will settle in the middle of the ring, where the heat is lowest. Equally, man is surrounded by his passions. He can not escape them, but he can try to establish the mean between the possible extremes, where his passions least disturb him.

How is man to deal with the most unruly parts of his nature? Ghazali gave his answer in the *Kitāb kasr al-šahwatain*.¹¹ He described the nature and original purpose of the desires for food and sex, gave a detailed account of the methods by which a man could hope to subdue and modify them and also explained why some people need to take greater care than others to control these appetites.

THE DESIRE FOR FOOD (*ŠAHWAT AL-BATN*)

Ghazali did not share the belief held by Christian theologians that the key to human suffering was to be found in sexuality. For this Muslim thinker, the root of all human disobedience, and subsequent misery, was the desire for food, not for sex. Christian theology had established an intrinsic link between the unruly nature of sexual desire and the Fall. According to St. Augustine, one of the leading Fathers of the Church, "man sinned by rebellion and was punished by rebellion of his (sexual) passions."¹² For St. Clement the connection between the Fall and unruly sexual desire is even more direct; according to him, Adam's sin was not to have had intercourse, but to have had intercourse too soon. He was tricked by the serpent "to procreate children sooner than was right", and thus "yielded to concupiscence."¹³

Ghazali, however, believed that the reason for the Fall was Adam and Eve's desire for food. "It was because of the desire for food (*šahwat al-batn*) that Adam and Eve were expelled from Paradise (*dār al-qarār*) to the world of humiliation and want (*dār al-ḡull wa al-iftiqār*). They had been forbidden to eat from the tree, but their desire overcame them, and so they ate from the tree and their nakedness became apparent to them."¹⁴ In contrast to Christian theologians, who argue that all human suffering has its origin in sexual desire, Ghazali allocated this role to the desire for food.

¹¹The *Kitāb kasr al-šahwatain* consists of the following sections: ["On the desire for food"]; "On the excellence of fasting, and disparagement of satiation"; "On the benefits of fasting and the harms of satiation"; "How to establish control over the desire for food"; "The rules of fasting and the merits of fasting: how they vary when applied to different people"; "About hypocrites who pretend to have given up on what they like to eat and claim to eat little"; "What the novice should do concerning marriage and celibacy"; "The excellence of those who resist temptation."

¹²U.Ranke-Heinemann, *Eunuchs for Heaven*, p.75.

¹³J.T.Noonan, *Contraception*, p.132.

¹⁴Ghazali, *Iḥyāʾ*, vol.3, p.80.

Ghazali seemed to suggest further that every human being was faced on a daily basis with a situation analogous to the situation encountered by Adam and Eve: God placed the first couple in the Garden of Eden, an environment in which they found everything to satisfy their needs. In order to test their obedience, He imposed on them a single prohibition - the prohibition to eat the fruit of the forbidden tree. The first couple failed the test - overcome by desire they ate what they were not allowed to eat.

The prohibition to eat from the forbidden tree was portrayed by Ghazali to be analogous to the divine command, directed at man, not to indulge in food. Ghazali described the human situation as follows: The believer finds himself in a world in which God, first and foremost, provides food and drink to keep him alive. But God provides more than the bare necessities of life- he provides an abundance of foodstuffs "which man delights in and which he craves"¹⁵, thus tempting man to eat more than necessary. At the same time, however, He makes it possible for man to survive on small quantities of food¹⁶ and warned the believer through the words of His Messenger never to overeat¹⁷. "All this", Ghazali explained, "He has done to put man to the test, in order to see how He influences that which man likes and that which he shuns."¹⁸ Man must choose daily whether to 'eat from the forbidden tree', ie. to follow his desire and overeat, or whether to obey the divine command to eat with moderation.

Adam and Eve were punished with expulsion from Paradise. What are the consequences of human disobedience to the divine command to control the desire for food? Distraction from God and preoccupation with worldly concerns (*al-inhimāk fī al-dunyā*), both of which constitute divergence from the straight path. Ghazali describes the stomach as "the source of desire and the breeding ground of harms and diseases"¹⁹, explaining that: "the desire for food [] is followed by a great desire for fame and wealth, since they, in turn, provide greater access to [] foodstuffs. But accumulation of wealth and fame is followed by all kinds of frivolity, rivalry and envy.

¹⁵ibid., p.80.

¹⁶ibid., p.79.

¹⁷ibid., p.80 ff.; a description of the right measure which appears in several Prophetic traditions is "half a belly full", eg: "Dress, eat and drink to fill half your bellies, for it is an aspect of prophethood." ibid., p.80.

¹⁸ibid., p.80.

¹⁹ibid., p.80.



Between them, wealth and fame breed hypocrisy and arrogance [], which then degenerate into hatred and enmity []. Finally, it leads man to commit what is wrong, forbidden, and abominable."²⁰ "All this", Ghazali laments, "is the result of lack of control of the stomach, and the wantonness in satiation this breeds."²¹

The philosophical interpretation of the origin of sin at the beginning of the *Kitāb kasr al-šahwatain* is complemented by a physiological explanation later in the chapter. Ghazali said: "Strength and desires lie at the origin of all sin, and there is no doubt that the substance (*mādda*) of strength and desire is food."²² And he added "The incentive behind the sins of all seven extremities (*al-a^cdā³ al-sab^ca*) is the strength derived from satiation."²³

Food is the most basic human need. Man must eat to live. For Ghazali, there is no question that in its function of keeping man alive, food is essentially positive, and even a sign of God's benevolence "for with food and drink, God protects man against [death]."²⁴ In addition, Ghazali emphasized, "food provides the strength for worship."²⁵ It is only when this desire becomes excessive, when a man no longer eats to fulfil his need but for the sake of satiation and pleasure, that it becomes problematic.

But the reverse is equally true: Ghazali implied that a believer who establishes control over this most fundamental desire is in control of all his other desires.²⁶ Control of the self, in other words, comes about as the direct result of control over the most unruly part of human nature - the appetite for food.

Therefore, it is of crucial importance that a man be moderate in his eating habits. What does moderate eating mean in practical terms? Ideally, Ghazali recommended, a man should eat enough to simply forget his stomach.²⁷ This happens when he eats enough to silence hunger, but not so much that his stomach feels heavy. For both the

²⁰ibid.

²¹ibid.

²²ibid., p.85.

²³ibid., p.86.

²⁴ibid., p.79.

²⁵ibid., p.96.

²⁶ibid., pp.85-6.

²⁷ibid., p.96.

pain of hunger and a full stomach stand in the way of concentrated worship, the first because the mind is preoccupied with the sensation of pain and thoughts of food, the second because overeating results, among other things, in sluggishness and fatigue. "The aim", Ghazali explained, "is to eat food that is light and easy to digest²⁸, in order to be like angels who are spared both the sensation of a full stomach and the pain of hunger.[] Whenever the believer experiences neither hunger nor satiation, worship and meditation are easy for him, he feels light in his soul and strengthened for his work despite this light sensation."²⁹

But the natural human tendency is to eat beyond that point of equilibrium between hunger and satiation. How is man to acquire the habit of moderate eating?

THE BENEFITS OF FASTING³⁰

Essentially, the believer must learn to discipline his self. In the case of most people, the self is stubborn, insubordinate, longing for excess and self-satisfaction. These attributes are incompatible with moderate behaviour. The key to true moderation therefore lies in control of the self. How is the self to be taught moderation? Ghazali argued that the most effective way of disciplining the self is fasting.³¹ "In the beginning³²", he explained, "the self is defiant, longing for pleasure and inclined to be excessive. Moderation at this point will not do any good. Rather, one must go to the extreme of making the self suffer through fasting."³³

Ghazali compared the unruly self to a young riding animal which must be broken in with beatings and other forms of punishment before it can be mounted.³⁴ Equally, the self must be "broken in" before man can set out on the path of spiritual advancement. It is not enough to simply reduce the intake of food - it is equally important to regulate the intervals between meals and, particularly, the nature of the food one consumes.³⁵

²⁸lit.: that leaves no trace.

²⁹Ghazali, *Iḥyāʾ*, vol.3, p.96.

³⁰*jūʿ* - literally: hunger; however, Ghazali uses it predominantly in the sense of "eating little", which is best translated as fasting.

³¹Ghazali, *Iḥyāʾ*, vol.3, p.85.

³²Ghazali is referring to the beginning of the novice's spiritual training.

³³Ghazali, *Iḥyāʾ*, vol.3, p.96.

³⁴ibid.

³⁵ibid., pp.89-96 "Methods to be used in establishing control over the desire for food."

Concerning the amount of food, Ghazali recommended: "The novice (*murīd* ³⁶) must establish the amount of food he needs to keep up his devotional practices. Once he has consumed that amount, he should stop eating, even if he is still hungry."³⁷ Further, the novice was advised not to eat more than once in twenty-four hours. He could even try to extend his periods of fasting up to forty days.

In general, the diet should consist of simple foods. Ghazali pointed out that particular care had to be taken during the initial period of training to avoid food one craves. The motivation behind all ascetic endeavour is the belief that the pleasures and amenities of this world are a trap for humanity, and that abstention from them liberates the believer for the next world. Ghazali explained that every time the novice eats what he craves, it increases his attachment to the world and reduces his willingness to die. For on the assumption that these delicacies will not be available to him after death, such a person imagines life on earth to be his paradise, and death his prison. The aim of the sincere believer, however, is to meet his Lord in the next life. He makes sure to deny his self the pleasures of the world, and prevents himself from eating food he craves, so that he comes to see the world as his prison and anticipates death as his release into the next world.³⁸

The process of disciplining the self through fasting can take a long time, but it is not to be kept up indefinitely. "The aim", Ghazali said, "is to discipline [the self] until it has become moderate. Once this has been achieved, you should go back to eating with moderation."³⁹ Once the believer has learned to control his self, there is no need to continue practising an extreme form of behaviour. Ghazali made it very clear that he considered fasting to be the means to an end, not an aim in itself. He quoted a long list of traditions from the Prophet and other sources which speak of the benefits of fasting. Thus the Prophet is reported to have said: "Fight your selves with hunger and thirst, for the reward given for this is like the reward given to the one who fights for God. There

³⁶ lit. novice of a Sufi order; Ghazali mostly uses it in the more general sense of 'someone who has the intention of devoting himself to worship'.

³⁷ *ibid.*, p.90.

³⁸ *ibid.*, p.91.

³⁹ *ibid.*, p.97

is no action dearer to God than hunger and thirst."⁴⁰ and also "No one who has filled his belly will enter the Heavens."⁴¹ These traditions extol the benefits of fasting, not moderation. "This", Ghazali admits, "might indicate to some that what God demands is excessive fasting."⁴² But he explains that one of the secret wisdoms of the *šari'a* (the sacred law of Islam) is indeed to exaggerate the prohibition of those things which nature demands in excess, if this excess is considered bad. "To the ignorant person, this might indicate that what is sought is the total opposite of what nature claims, but the intelligent person understands that the goal is the mean. If nature demands one extreme, satiation, then the law must praise the other extreme, fasting. This way, nature will be the provoking agent and the law the obstacle. As a result they will even each other out, and moderation is established."⁴³

Certain benefits derive from fasting itself. Ghazali argued that the pain of hunger reminds man of the punishment awaiting him in Hell. The believer must never forget this punishment, for it is the thought of Hell which inspires fear and, consequently, obedience to God's commands. Ghazali describes the pain of hunger as the greatest affliction man can suffer on earth; it is therefore a suitable premonition of the worst to come.⁴⁴

In addition, fasting sharpens the intellect and heightens perception, whereas satiation breeds stupidity. "If the youth eats too much, his memory weakens, his mind becomes lazy and his powers of understanding slow down."⁴⁵ Also, a hungry person is more sensitive to the pleasures of meditation.

There are a number of very practical benefits to be derived from eating little, particularly for a person at the beginning of his spiritual training, who must spend as much of his time as possible engaged in meditation, study and other devotional practices. An important asset in long hours of prayer and meditation is good health, and

⁴⁰ibid., p.80.

⁴¹ibid., p.80.

⁴²ibid., p.96.

⁴³ibid., p.96.

⁴⁴ibid., p.85.

⁴⁵ibid., p.84.

a simple, light diet interspersed with periods of fasting was believed to have a positive effect on a person's general health.⁴⁶ The light eater also needs less sleep than the heavy eater, so while the first can devote his days and many of his nights to worship, the second wastes his life and many opportunities for prayer in sleep. The preparation of food is costly and takes time. Someone content with little and simple food not only saves money but also the time it takes to buy and prepare food, the time it takes to eat it, and the time it takes to relieve oneself of it.⁴⁷ Finally, he is able to give away leftovers to the poor and the orphans, and gain merit with God for his charity.⁴⁸

THE DESIRE FOR SEX (*ŠAHWAT AL-FARJ*)

In the same way that it is important to fulfil the natural desire for food it is important to fulfil the natural desire for sexual intercourse. But in the same way that it is important to control the desire for food it is important to control the desire for sexual intercourse.

Of all human desires, Ghazali argued, the desire for sexual intercourse is the strongest⁴⁹: "The greatest desire is the desire for women."⁵⁰ and "Know that this desire is the strongest human desire and the one that disturbs the mind most insistently."⁵¹

God made the pleasure accompanying intercourse the most pleasurable human experience. He did this, Ghazali explained, to give man something tangible by which to measure, or anticipate, the pleasures of Paradise, thus providing him with the strongest incentive to lead a proper religious life.⁵²

In addition, sexual desire plays a crucial role in procreation. Ghazali explained that God, intending to secure the survival of mankind, created sexual desire to be so strong that human beings would be unable to resist its calling, even if they wanted to. "Among His marvellous acts of benevolence [] is the forceful imposition of sexual desire,

⁴⁶ibid., p.87.

⁴⁷ibid., p.86, p.87.

⁴⁸ibid., p.88.

⁴⁹ This description seems to contradict Ghazali's ranking of the desire for food. However, I believe that Ghazali is making a distinction between need and desire. The desire for food results from the strongest human need, but the desire for sex is the strongest human desire.

⁵⁰Ghazali, *Iḥyāʾ*, vol.3, p.100.

⁵¹ibid., p.104.

⁵²ibid., p.99.

compelling mankind to procreate and thus guaranteeing the survival of their race, even against their will."⁵³

Ghazali was convinced that the reason why, of all earthly pleasures, sexual pleasure is the one most ardently sought by man is the fact that God wanted it to be the most pleasurable earthly experience.

At the same time, God imposed clear limits for the use of sexual desire. Islamic law prohibits sexual intercourse outside marriage (or concubinage) and violation of this rule is punished severely. The greatest moral danger posed by sexual desire is the danger of fornication, and it follows that the first principle of moderation is to restrict sexual activity to marriage. But even within the limits of the law, sexual desire can lead to excess. Ghazali equated excess with all disturbance of that state of physical and emotional equilibrium which allows full concentration on the divine. He said: "[Sexual desire] is in excess when men are utterly preoccupied with the enjoyment of women and concubines."⁵⁴; in other words, when passion rules the mind.

One manifestation of excess is the consumption of aphrodisiacs. Ghazali strongly condemned those who, in the pursuit of greater pleasure, consume substances which stimulate what even under normal circumstances is one of the most unruly of man's passions. The artificial stimulation of sexual desire through the use of aphrodisiacs runs counter to the idea of moderation, to say the least. Ghazali, whose vision of the ideal human being is a person liberated from the stirrings and molestations of sexual lust sees it as a clear indication of the enslavement of reason to passion.⁵⁵

A second manifestation of excess is romantic love (*ʿiṣq*)⁵⁶. A characteristic feature of romantic love is the focus on a particular individual as the source of emotional and sexual fulfilment. Ghazali condemned this fixation on a particular person as "an excessive inflation of lust"⁵⁷ and "extreme ignorance of the purpose for which sexual

⁵³Ghazali, *Iḥyāʾ*, vol.2, p.21.

⁵⁴Ghazali, *Iḥyāʾ*, vol.3, p.100.

⁵⁵ibid., p.100.

⁵⁶the problem of romantic love is discussed in Arabic medicine, where it is considered a "disease of the head", an abnormal obsession similar to melancholy and manic depression. Ibn Sina, *Kitāb al-qānūn fī al-ṭibb*, Book III, vol.2, p.71.

⁵⁷Ghazali, *Iḥyāʾ*, vol. 3, p.101.

intercourse has been created"⁵⁸, namely procreation and pleasure. According to Ghazali, a man should be content to satisfy his sexual lust with another suitable female partner; the focus on one particular woman is the result of an emotional, and sexual, aberration which creates a reprehensible form of dependance.

The ideal is "for sexual desire, as it ebbs and flows, to be moderate and to obey reason and the law."⁵⁹ A man should have sex, albeit within marriage, he should not be obsessed with a specific partner, and he should not attempt to stimulate his sexual appetite artificially. At the same time, Ghazali condemned the inability to fulfil the sexual needs of one's partner, whether this is the result of impotence or other reasons.⁶⁰

A particular problem arises for the novice. Ideally, the novice should not be married at the beginning of his spiritual training. In the initial phase, his time should be occupied with study, prayer, fasting and meditation, and he should learn to make God the absolute center of his life. If he is married, he will be tempted to spend time in the company of his wife, rather than be engaged in the arduous tasks of spiritual exercise. Ghazali said: "Whoever is intimate with someone other than God is distracted from God."⁶¹ From this point of view, it is best for the novice to remain unmarried until he has learned to make God the unrivalled focus of all his love and attention.

As in the case of food, Ghazali devised special rules for the novice which diverge from the principle of moderation. In the beginning of his training, the novice is advised not to eat with moderation, but to fast in order to learn to control his unruly self. Similarly, he should not marry and have sex, but he should remain celibate and learn to focus all his attention on God rather than a fellow human being. But both fasting and celibacy are excessive forms of behaviour, and as such, both are problematic. Fasting causes the pain of hunger, which in itself can be a source of distraction, and weakens

⁵⁸ibid., p.100.

⁵⁹ibid., p.101.

⁶⁰ibid., p.101.

⁶¹ibid., p.101.

the body. Unfulfilled sexual desire can lead to a complete mental preoccupation with things sexual and, worse, to the actual crime of illicit sex.

Ghazali feared a situation where the celibate novice was unable to prevent himself from looking at the objects of his desire, be they women or young boys. For lustful glances could have serious consequences: for one, they are a distraction preventing concentrated worship.⁶² Secondly, coveting, which Ghazali called "fornication of the eye" (*zinā al-^cain*)⁶³, can lead to actual fornication (*zinā al-farj*). Ghazali argued that "whoever cannot prevent himself from looking lustfully at persons who are forbidden to him (*ḡaḍḍ baṣarahu*)⁶⁴ cannot control his actual sexual behaviour (*ḥafẓ farjahu*)."⁶⁵

At first, Ghazali suggested, the novice should try to suppress sexual desire with "hunger and constant fasting"⁶⁶. Ghazali saw a direct link between the desire for food and the desire for sex whereby indulgence in food leads to indulgence in sex: "The man who overeats loses control over his genitals (*idā šabi^ca al-rajul, lam yamlik farjahu*)."⁶⁷ But the reverse is equally true, so that fasting can repress the desire for sex. Can - for Ghazali was well aware of the limitations of ascetic practices in suppressing sexual desire. And thus in a situation where fasting fails to repress sexual preoccupation and temptation, Ghazali suggested marriage: "Whenever the novice is unable to prevent himself from looking at what is prohibited (*ḡaḍḍ baṣarahu*) and to suppress his thoughts, then the right thing for him is to control desire with marriage - for indeed, the yearning of many a soul cannot be silenced with fasting."⁶⁸

The following tradition reflects Ghazali's attitude well. "A novice said: 'In the beginning of my training (*irādati*), my desire (for sex) troubled me greatly, and so I often pleaded loudly with God. One night, I saw a person in my dream and he asked:

⁶²ibid., p.102.

⁶³ibid., p.102.

⁶⁴ Quran (24:30) "Say to the believers, that they cast down their eyes and guard their private parts (*Qul li 'l-mu'minīna yaḡuḍḍū min abṣārihim wa yahfuẓū furūjahum*)."(M.Pickthall, *The Glorious Koran*, Sura 24, Verse 30).

⁶⁵Ghazali, *Iḥyā'*, vol.3, p.102.

⁶⁶ibid., p.101.

⁶⁷ibid., p.86.

⁶⁸ibid., p.103.

'What is the matter with you?' I told him about my affliction and he said: 'Approach!' I approached him and he put his hand on my chest and I could feel its coldness in my heart and the whole of my body. When I woke up my desire had left me and I remained without it for a whole year. Then it befell me again and I increased my calls for help. Again someone came to me in my sleep and said to me: 'Do you wish for your affliction to disappear? Then I shall hit your neck.' I said 'yes' and he told me to hold out my neck. I did so and he drew a sword made of fire and hit my neck with it. When I woke up my desire had left me once more and I remained without it for another year. Then it befell me again and it was even stronger than before. Then I had a vision of a person [] asking me: 'How often are you going to ask God to take away something he does not wish to take away?' So I married, and my affliction stopped and I had children."⁶⁹

Even if the novice must marry to protect himself against fornication, he should continue to honour the principles of his spiritual training. He does this if he chooses his wife and conducts marriage according to the guidelines laid out in the *Kitāb ādāb al-nikāḥ*.

The two discussions of food and sex in the *Kitāb kasr al-šahwatain* are in many ways identical in content and structure. In both cases, Ghazali began with a description of the nature of the desire, explaining the reasons why God created it and highlighting its problematic and dangerous aspects. He then suggested ways of minimising the harmful effects of desire - namely through moderation - and gave special instructions for those at the beginning of their spiritual training. However, the two discussions differ in one important respect: the extent to which Ghazali considered extreme behaviour -fasting and celibacy- successful in breaking the desire for food and the desire for sex. Ghazali did not doubt the effectiveness of fasting when it comes to training the self to eat with moderation. He was equally convinced that fasting as such is beneficial, as is evident from the section, covering five pages, in which these benefits are elaborated.⁷⁰ The usefulness of celibacy in eliminating the novice's preoccupation

⁶⁹ibid., p.103.

⁷⁰"On the benefits of fasting and the harms of satiation", pp.84-89.

with things sexual, and worse, the danger of fornication, was far more questionable. In "What the novice should do concerning celibacy and marriage"⁷¹, Ghazali devoted barely half a page to the option of celibacy. Within 14 lines, he suggested that the best way to silence the novice's desire for sex might indeed be marriage, the mean, not celibacy, the extreme.⁷² In addition, there is no separate discussion on the benefits of celibacy to parallel the section on the benefits of fasting. The chapter on the breaking of the desire for sex closes with a compilation of stories about men who resisted the temptation to have sexual intercourse with women unlawful to them. This could, in one way, be taken as exemplary behaviour which the unmarried novice should try to emulate; it cannot, however, be called an argument in favour of celibacy.

⁷¹ibid., p.101.

⁷²ibid.

CHAPTER TWO: MARRIAGE AND CELIBACY

THE *KITĀB ĀDĀB AL-NIKĀḤ*:

The *Kitāb ādāb al-nikāḥ* is, first and foremost, a response to the conflict between supporters of marriage and advocates of celibacy. Ghazali explicitly placed the *Kitāb ādāb al-nikāḥ* within this context. He explained that there were two points of view in Islamic religious circles. On one side there were those who claimed that marriage was [religiously] better than exclusive [celibate] devotion to worship, and on the other side were those who claimed the opposite.¹ What Ghazali is providing in the first chapter of the *Kitāb ādāb al-nikāḥ* is a summary of the traditional Islamic material which pertains to the subject, followed by his own evaluation of the arguments which have been presented in favour and against marriage. His stated aim was to clarify the matter; the result is the probably fullest discussion about marriage in mediaeval Islam, providing the most comprehensive list of reasons why mediaeval Muslims would marry. The need to spell out these reasons arose from a fresh debate about the merits of marriage; the reasons themselves, however, are timeless.

The other two chapters of the *Kitāb ādāb al-nikāḥ* deal with marriage as an established legal and social institution. These sections contain all the information needed by someone, who, having contemplated the reasons for and against, has decided in favour of marriage.

STRUCTURE OF THE *KITĀB ĀDĀB AL-NIKĀḤ*:

1. Introduction (p.21) ²

A short introduction in twelve lines in which Ghazali places marriage in the context of sexuality and God's overall scheme for the creation.

2. Chapter One: The Case for and the Case against Marriage - *al-Targīb fī al-nikāḥ wa al-targīb ʿanhu* (pp.21-36)

2.1. Traditions in favour of marriage -

¹Ghazali, *Iḥyāʾ*, vol.2, p.21.

²page references are to the second volume of the Beirut edition of the *Iḥyāʾ ʿulūm al-dīn* printed at Dar al-Maʿrifa.

- a. From the Quran
- b. Prophetic traditions (*ḥadīṭ*)
- c. Non-Prophetic traditions: The views of members of the early Muslim community (pp.21-24)

2.2. Traditions against marriage - *ḥadīṭ* and other early views (p.24)

2.3. The merits of marriage - *Fawā'id al-nikāh* (pp.24-33)

- a. Children - *al-walad* (pp.24-27)
- b. Protection from sin - *kasr al-šahwa* (pp.27-30)
- c. Companionship - *kuṭrat al-ašira* (pp.30-31)
- d. Housekeeping - *tadbīr al-manẓil* (p.31)
- e. Training of the Self - *mujāḥadat al-nafs bi'l-qiyām bihunna* (pp.31-33)

2.4. The harms of marriage - *Āfāt al-nikāh* (pp. 33-34)

- a. Financial burden - *al-ʿajz min talab al-ḥalāl* (p. 33)
- b. Failure to fulfil moral responsibilities - *al-qusūr ʿan al-qiyām biḥaqqihunna* (pp.33-34)
- c. Distraction- *an yakuna al-ahl wa al-walad šāḡilan lahu ʿan allāh* (p.34)

2.5. Ghazali's conclusion (pp.34-36)

3. Chapter Two: The Marriage Contract, and conditions and qualities of the ideal bride (pp.34-42)

3.1 The conditions of the legal contract of marriage and recommended practices (p.36)

3.2. The bride (pp. 36-41)

- a. Legal conditions of eligibility for marriage (Who can you marry and who is forbidden to you) (pp.36-37)
- b. Qualities of the good wife (Who you should marry and who you should avoid) (pp.37-41)
 - i. Piety - *dīn*
 - ii. Good temperament - *kulq*

- iii. Beauty - *ḥusn*
- iv. Small dowry - *kiffat al-mahr*
- v. Fertility - *wallāda*
- vi. Virginity - *bakāra*
- vii. Good family - *nasab*
- viii. Avoid close relatives - *an lā takūna qarāba qarība*
- c. Qualities of the good husband (the responsibility of the bride's guardian)
(p.41)

4. Chapter Three: The Conduct of Married Life (pp.42-60)

4.1. The responsibilities of the husband (pp.41-56)

- a. The marriage banquet - *walīma* (p.42)
- b. Gentle and forgiving treatment. - *ḥusn al-kulq maʿahunna wa ihtimāl al-ada minhunna* (pp.42-44)
- c. Provision of amusement and fun, - *al-mudāʿaba wa al-mazḥ wa al-mulāʿaba* (p.44)
- d. Without following women's every whim or losing his authority. - (pp.44-45)
- e. Control of jealousy. - *al-iʿtidāl fī al-ḡaira* (pp.45-47)
- f. Adequate and moderate financial expenditure. - *al-iʿtidāl fī al-nafaqa* (p.47)
- g. To know and teach her personal religious obligations. - (p.48)
- h. Just and equal treatment of each and every wife (for those who have more than one). - (pp.48-49)
- i. Conduct in marital discord. (p.49)
- j. Sexual relations (including a discussion of contraception and abortion).
(pp.49-53)
- k. The birth of children (what to do when children are born). (pp.53-55)
- l. Divorce. (pp.55-56)

4.2 The Responsibilities of the Wife. (pp.56-60)

THE CONFLICT

The question whether the novice should marry or not had originally been posed in Sufi circles. One of the most important characteristics of early Sufism was the belief in asceticism as the prerequisite to a truly religious life. For that reason, many early Sufis rejected marriage. The first to openly challenge the institution of marriage was Abu Talib al-Makki in his Sufi treatise *Qūt al-qulūb fī muʿāmalat al-maḥbūb*³. Makki asked "What is preferable, marriage or celibacy", and concluded that it was celibacy. After him, 'Ali bn 'Uthman al-Hujwiri reached a similar conclusion in his *Kašf al-maḥjūb* ("The Unveiling of the Veiled")⁴.

In its early development, the mystical movement within Islam had been marginal, and its beliefs did not challenge the beliefs of mainstream Muslim society. However, as the number of followers of Sufism rose, the movement's ideas increasingly came into conflict with the teachings of Islamic orthodoxy.⁵ Sufism derived guidance and

³Abu Talib Muhammad bn 'Ali al-Harithi al-Makki, transmitter of Prophetic traditions, mystic, ascetic, preacher and head of the dogmatic school (*maḏhab*) of the Salimiyya in Basra. Lived and taught in Mekka, Basra and Baghdad, where he died in 998/A.H.386. His chief work is the *Qūt al-qulūb fī muʿāmalat al-maḥbūb*, the first comprehensive handbook of Islamic mysticism. The *Qūt al-qulūb* strongly influenced later works on Islamic mysticism, especially Ghazali's, and was widely quoted. Abu Talib al-Makki, *Qūt al-qulūb fī muʿāmalat al-maḥbūb*, 2 vols in 1 (Cairo, 1893)

Bibliography: A.J. Arberry, *Sufism - An Account of the Mystics of Islam* (London, 1950), p.68; J.Baldick, *Mystical Islam* (London: Tauris, 1989), p.56; C.Brockelmann, *Geschichte der Arabischen Literatur*, 2 vols.(2nd ed., Leiden, 1943-49), vol.1, p.200, Supplement, 3 vols.(1937-42), vol.1, pp.359-66; U. Kahhala, *Muʿjam al-muʿallifīn* (Damascus, 1957-61), vol. 11, pp.27-28; L.Massignon, "Abu Talib", *Encyclopedia of Islam*, 2nd. ed. (Leiden: E.J.Brill, 1960), vol.1, p.153; A. Schimmel, *Mystical Dimensions of Islam*, p.56, 85; M.Smith, *Rabi'a the Mystic* (CUP, 1984) index and intro. p. xiv.

⁴Abu al-Hassan 'Ali bn 'Uthman bn 'Ali al-Jullabi al-Hujwiri, a native of Ghazna, Afghanistan (Jullab and Hujwir were two suburbs of Ghazna), died approximately 1071. His *Kašf al-maḥjūb* (Leningrad, 1926) is the oldest Persian treatise on Sufism, and the only one of his works to have survived. It was probably written in Lahore, during the last years of Hujwiri's life, with the aim of presenting the complete system of Sufism, setting out and discussing its doctrines and its practices. Before stating his own view, the author generally examines the current opinions on the same topic and refutes them if necessary. Although he was a Sunni and a Hanafite, Hujwiri managed to reconcile his theology with an advanced type of mysticism. Little is known of Hujwiri's life beyond what he relates incidentally in the *Kašf*. He travelled throughout the Islamic empire, and seems to have settled for some time in Iraq. After his death, he was revered as a saint and his tomb in Lahore became a place of pilgrimage.

Bibliography: *Kašf al-maḥjūb li 'l-Hujwiri*, Arabic translation and commentary by Is'ad 'Abd al-Hadi Qindil (Cairo, 1974); Hidayet Hosein [H.Massé], "Hudjwiri", *Encyclopedia of Islam* (Leiden: E.J.Brill, 1971), vol.3, p. 546; *The Kashf al-mahjub: the oldest Persian treatise on Sufism*, tr. R.A.Nicholson (Leiden and London, 1911), intro.; idem, *The Mystics of Islam* (London, 1914), index; idem, *Studies in Islamic mysticism* (Cambridge, 1921); A.Schimmel, *Mystical Dimensions of Islam*, index; M. Smith, *al-Ghazali the Mystic* (London, 1944) index; idem *Rabi'a the Mystic* (CUP, 1984), index and intro. p. xxii; Abu 'l-Hassan 'Ali bn 'Uthman bn 'Ali al-Jullabi al-Hujwiri, *Kashf al-mahjub* -Persian text with seven indexes (ed. V.A. Zukovsky, Leningrad, 1926, edition based on five manuscripts)

⁵the surest indication of the growing importance of Sufism is the foundation of brotherhoods, which began with the 12th century. Whereas the early Sufis "lived in isolation, without any common ties or doctrine" (M.Smith, *Early Mysticism in the Near and Middle East*, p.158), brotherhoods, headed by a *ṣāikh*, gathered their disciples in special centres - *kānqāh* or *ribāt* - where they would pursue a standardized method of spiritual training. (A. Schimmel, *Mystical Dimensions of Islam*, pp.231-2; M.Smith, *Rabi'a the Mystic*, pp. 165-175).

inspiration from the same sources as orthodox Islam - the Quran, Prophetic traditions and traditions from prominent members of the Muslim community. The conflict between orthodoxy and certain Sufis on the issue of marriage has to be seen as a conflict between different interpretations of the same material. Indeed, the *Qūt al-qulūb* was one of three Sufi treatises written at the end of the 10th century with the aim of proving that the doctrine of the Sufis was entirely "Islamic" and compatible with the "strictest standards of orthodoxy".⁶ Makki drew on material available in Muslim culture as a whole to discuss marriage and celibacy. He was trying to defend a sectarian position, but he used material accepted by all Muslims. There can be no doubt about his own preference for celibacy and his personal conviction that celibacy is best for a life of worship. He did not omit well-known traditions in favour of marriage, but wished instead to argue that celibacy was the proper Islamic solution despite the pro-marriage message of much of the traditional material.

MAKKI'S STRATEGY

Makki tried to make his argument convincing by following a certain strategy: primarily, he tried to weaken the impact of Quranic and Prophetic instructions on marriage. Makki claimed that the Quran had been ambiguous on the issue of marriage. He also tried to divert attention from Quranic and Prophetic statements on marriage. In general, he placed disproportionate emphasis on statements which highlight the problems associated with family life and obligations in order to distract from the overwhelming pro-marriage message of most of the traditions. Overall, Makki appears to have tried to instill doubt in his readers' minds over whether the traditional material had really predominantly spoken in favour of marriage, or whether it had been wrongly interpreted.

Makki opened his discussion with the Quranic verse "And marry such of you as are solitary."⁷, which he interpreted as follows: "God commanded marriage for those who are in need of it (*al-muḥtājīn*) and ^{merely} [~~only~~] recommended it for those who are immune

⁶A.J. Arberry, *The doctrine of the Sufis* (CUP, 1979), p. xiii intro.

⁷M.Pickthall, *The Glorious Koran*, Sura 24, Verse 32.

from sin (*al-ma^cṣūmīn*). And so marriage is a religious duty (*fard*) for those who need it and a good custom (*sunna*) for those who would be able to do without it."⁸ To Makki, the Quranic verse does not give a universal command to marry, but differentiates between types of people. There are those who need to marry in order to protect themselves against the dangers of unfulfilled desire, and there are those who are in control of sexual desire and safe from its dangers. Makki described the latter as *al-ma^cṣūmīn*, the infallible or sinless, using an expression normally used to describe the infallibility of God's prophets. He implied that someone who has established control over his passions and is immune against the dangers of unfulfilled sexual desire is exempt from the order to marry. It is this differentiation between types of people which allowed Makki to argue that celibacy was the right choice for certain members of the Islamic community, namely the ascetics.

In Muslim argument, Quranic and Prophetic statements are normally the first source of guidance. But throughout Makki's entire discussion, Quranic and Prophetic statements appear somewhere in the middle, or even at the end, rather than in a prominent position at the beginning of a section. It is a fact that both the Quran and the Prophet speak predominantly in favour of marriage; one way to obscure this fact was to pay little attention to them in general.

Although Makki opened his discussion with pro-marriage statements from the Quran and the Prophet, they fill barely ten lines.⁹ Instead, a cluster of four important Quranic pro-marriage statements appears only on the seventh page of his discussion.¹⁰ And similarly, a cluster of five important Prophetic pro-marriage traditions appears only on the fifth page.¹¹ Both clusters appear towards the end of a pro-marriage section ¹², rather than at the beginning. Instead, the section opens with statements from members

⁸Makki, *Qūt al-qulūb*, vol. 2, p. 237.

⁹ibid., pp.237-8.

¹⁰ibid., p.243.

¹¹ibid., p.242.

¹²the section starts on page 240. Sections in Makki's discussion are not always easy to identify, for the discussion is lacking an overall structure and is not separated into chapters with headings.

of the early Muslim community, such as Ibn Abbas (d.686-8)¹³, Ikrima (d.723-4)¹⁴, Qatada bn Di'ama (d.735)¹⁵, Umar bn al-Khattab (d.644)¹⁶ and Mu'awiya bn Abi Sufyan (d.680)¹⁷. Similarly, the pro-celibacy section¹⁸ opens with statements from Bishr bn al-Harith al-Hafi (d.840), a well-known ascetic¹⁹. Prophetic traditions which highlight certain negative aspects of marriage are quoted later²⁰. This shows the extent to which Makki was trying to weaken the impact of the Quranic and Prophetic pro-marriage material, while the fact that he did mention it at all rendered him immune to accusations of not arguing within the Islamic context.

Generally, Makki placed disproportionate emphasis on the negative aspects of marriage. His discussion opens with 10 lines of statements in favour of marriage, but their impact is significantly reduced by the immediately following discussion, covering two and a half pages (or 71 lines), of the advantages of celibacy. This is remarkable, because the disproportionate amount of space allocated to pro-celibacy arguments so early in the discussion gives the reader a completely wrong impression of the importance of pro-celibacy statements and arguments in the Islamic tradition in general. The great majority of traditional Islamic material speaks in favour of marriage.

Makki did not divide his discussion into clearly marked chapters, devoted to one aspect of marriage or celibacy at a time. This is important, for although Makki's argument divides into recognizable sections, the absence of a self-imposed structure allowed him to frequently change between arguments in favour and against marriage. In the first twelve pages of his discussion, Makki changed back and forth twelve times between arguments and traditions in favour of marriage and in favour of

¹³one of the greatest scholars of the first generation of Muslims. L.Veccia Vaglieri, "Ibn Abbas", *Encyclopedia of Islam*, 2nd ed. (Leiden: Brill, 1960), p.40, vol.1.

¹⁴a distinguished member of the generation of Successors (*tabi'ūn*); slave of Ibn 'Abbas. J.Schacht, "Ikrima", *Encyclopedia of Islam*, 2nd. ed. (Leiden: E.J. Brill, 1971), vol.3, pp.1081-2.

¹⁵a Successor; Ch.Pellat, "Katada b. Di'ama", *Encyclopedia of Islam*, 2nd.ed. (Leiden: E.J.Brill, 1978), vol.4, p.748.

¹⁶the second Caliph (634-44). A. Hourani, *A History of the Arab Peoples* ; p.23; G.Levi Della Vida, "Omar Ibn al-Khattab", *Encyclopedia of Islam*, 1st ed. (Leiden: Brill, 1936), vol.3, pp.982-4.

¹⁷the first Umayyad caliph (661-80). A. Hourani, *A History of the Arab Peoples* , p.25ff.

¹⁸which begins at the top of page 238: Makki, *Qūt al-qulūb*, vol. 2, p. 238.

¹⁹A.Schimmel, *Mystical Dimensions of Islam*; index.

²⁰ at the bottom of page 238: Makki, *Qūt al-qulūb*, vol. 2, p. 238.

celibacy.²¹ In doing so, he was able to place disproportionate emphasis on celibacy while the bulk of the material speaks in favour of marriage. Makki's continuous reminders of the superiority of celibacy weaken the impact of the pro-marriage material.

On several occasions, Makki placed a pro-celibacy statement in such a way that it changed the message of an entire section which appeared, otherwise, to be speaking in favour of marriage. The following example will demonstrate this method: page 247 begins on a pro-marriage note with traditions about the welcome distraction found in women's company, providing repose from intense periods of worship and meditation. But Makki then inserts an important admonition: whereas this benefit of marriage might have applied in older days, when women were different, it does not apply in his own time²². This admonition is followed by three traditions describing the virtues of women in the past. Finally, Makki reports three statements from the ascetic Abu Sulaiman al-Darani underlining the superiority of celibacy. Out of twenty-eight lines on page 247, barely four speak against marriage. However, the pro-marriage message of the remaining twenty-four lines is entirely lost on the reader as a result of the strategic positioning of Makki's key statement about the change in women's characters and al-Darani's statements in favour of celibacy.

On another occasion, Makki reported what prominent members of the early Muslim community, such as Ibn Abbas, Ikrima and Qatada, had said about the importance of marriage to avert the dangers of unfulfilled sexual desire.²³ However, this important argument in favour of marriage is entirely discredited by the tradition, immediately preceeding it, in which someone who needs marriage to control his desire is compared to a donkey on heat.²⁴

²¹ibid., pro-marriage: p.237, last five lines - p.238, l.5; pro-celibacy: p.238, l.5 - 239, l.21; pro-marriage (to a slave woman): p.239, l.21 - p.240, l.5; pro-celibacy: p.240, l.5 - l.11; pro-marriage: p.240, l.11 - p.244, l.12; pro-celibacy: p.244, l.12; pro-marriage: p.244, l.13; [] pro-celibacy: p.244, l.21 - l.22; pro-marriage: p.244, l.22 - p.247, l.8; pro-celibacy: p.247, l.8; pro-marriage: p.247, l.8 - 25; pro-celibacy: p.247, l.25 - p.248, l.13; pro-marriage: p.248, l.13 ff.

²²ibid., p.247; Makki said: "In the old days, women used to be different from today."

²³ibid., p.240.

²⁴ibid.

On yet another occasion, a series of traditions about good women is interrupted by a tradition extolling the delights of solitude.²⁵ Elsewhere, Makki placed an argument in favour of marriage to a slave between two passages highlighting the benefits of celibacy. In this case, the argument in favour of marriage does not change the message of the pro-celibacy section surrounding it - rather, it is virtually swallowed up by the surrounding argument, and marriage is presented as the inferior option.²⁶

GHAZALI'S RESPONSE

Makki had gathered statements from a wide variety of literary genres - from Quran, *ḥadīth* and other traditions from Sufis and non-Sufis alike, *adab*, *fiqh*, and even medicine. We can assume that, to some extent, Ghazali considered Makki's collection of material on marriage a valuable source of information on the subject, which prompted him to rely on it so extensively. Ghazali's familiarity with Makki's *Qūt al-qulūb* has been recognized²⁷, but not the intimate connection between the two texts in the section devoted to the discussion of marriage and celibacy. All in all, Ghazali incorporated forty percent of the traditions and arguments Makki had used in his chapter on marriage in his own discussion of marriage in the *Iḥyāʾ*.

However, Ghazali did much more than simply copy Makki; he also restructured Makki's material and argued against him. The *Kitāb ādāb al-nikāḥ* can only be properly understood as a direct response to Makki's *Qūt al-qulūb*. This is particularly true of the first chapter of the *Kitāb ādāb al-nikāḥ*, which presents the case for and the case against marriage. Even a ^{CURSORY} furtive glance at the two discussions of marriage reveals an important difference: Makki's discussion is marked by the absence of systematic structuring, and he shifted constantly between the two sides of his argument. In contrast, Ghazali's discussion is divided into clearly marked sections, each of which

²⁵ibid., p.244.

²⁶ibid., p.239-40.

²⁷for example, in his commentary on the *Iḥyāʾ*, the *Ithāf al-sāda al-muttaqīn bi šarḥ Iḥyāʾ ʿulūm al-dīn*, Murṭada al-Zabidi frequently draws on Makki to explain Ghazali's text. Also see H.Lazarus-Yafeh, *Studies in al-Ghazali* (Jerusalem, 1975), p.18-19: "Al-Ghazzali does, indeed, mention certain sources []. The most important of these sources seems to be the "*Qūt al-qulūb*" by Abu Talib al-Makki." And p.34: "Al-Ghazzali mentions Abu Talib al-Makki among other Sufi authors in the "Munqidh". [] He mentions him also in the "*Iḥyāʾ*". "

is devoted to an argument in favour of either marriage or celibacy. Makki's aim had been to deflect from the pro-marriage message of much of the traditional material, and he tried to achieve this by shifting the emphasis and obscuring the issue. Ghazali's response was to rearrange the traditional material collected by Makki and to present it systematically at the beginning of the discussion. This systematic presentation, Ghazali hoped, would clarify the issue by allowing the traditional material to speak for itself.

For Ghazali, this systematic presentation consisted of two parts: a list of the most important statements from the Quran, the Prophet and other prominent members of the early Muslim community, first on marriage, then on celibacy, followed by an explanation of the issues emerging from the traditional material, divided along the two lines of the argument.²⁸

The first chapter of the *Kitāb ādāb al-nikāḥ* opens with "Traditions in favour of marriage", from the Quran, the Prophet and the Companions, followed by "Traditions against marriage", from the Prophet and early Sufis. The great majority of these traditions had been mentioned by Makki; but whereas, in Makki's text, they are distributed throughout, Ghazali placed them at the very front of his discussion. Traditions in favour of marriage take up fifty lines, traditions against marriage a mere eleven. Ghazali's rearrangement of the material clearly demonstrates that traditions in favour of marriage outweigh traditions in favour of celibacy, at least quantitatively.

Ghazali then proceeded to explain, in sections clearly marked and devoted to only one topic at the time, the arguments for and against marriage contained in the traditional material. Again, much of the raw material of this section was copied from Makki's text; however, Ghazali extrapolated additional ideas from the traditional material which Makki had not mentioned. Ghazali divided the benefits of marriage into five groups: Children (*al-walad*), Protection from sin (*kasr al-šahwa*), Companionship (*kuṭrat al-ašira*), Housekeeping (*tadbīr al-manzal*) and Training of the self (*mujāḥadat al-nafs bi'l-qiyām bihunna*). He divided the harms of marriage into three: Financial burden (*al-ʿajz min talab al-ḥalāl*), Failure to fulfil moral responsibilities (*al-*

²⁸He said: "The only way to find out what is right is to state what tradition has said in favour and against marriage, and then to explain its merits (*fawā'id*) and evils (*ḡawā'il*)." Ghazali, *Iḥyā'*, vol.2, p.21.

qusūr ʿan al-qiyām biḥaqqihunna), and Distraction²⁹ (*an yakuna al-ahl wa al-walad šāḡilan lahu ʿan allāh*).

Ghazali agreed with many of the arguments against marriage which Makki brought forth, since he repeated almost all of them. He took Makki's concerns seriously, and did not try to dismiss his pro-celibacy argument in general. However, Ghazali disagreed with Makki's method of argument. For Ghazali, there could be no doubt about the pro-marriage message of the Quran, the Prophet's example and most of his sayings, and he saw no use in denying or obscuring it. But even the Quran and the Prophet alert Muslims to the potential problems associated with family life, particularly the danger of being distracted from God through family concerns. It was in Sufi circles that the potential problems associated with family life were given particular attention. In his own discussion of marriage, Ghazali showed that these Sufi concerns had relevance for all Muslims. But in Ghazali's view it was possible to alert the believer to these concerns by simply, and clearly, listing what Quran, Prophet and important members of the Muslim community had said. Ghazali saw no need to manipulate the traditional material in the way Makki had done.

THE ISLAMIC ARGUMENT IN FAVOUR OF MARRIAGE AND CELIBACY

What is the content of the traditions, from the Quran, the Prophet and prominent members of the early Muslim community, which form the raw material of the discussion?

At the beginning of his list of Quranic statements Ghazali repeated the Quranic verse which Makki had used to open his discussion of marriage: "And marry such of you as are solitary." Makki had interpreted it to be a recommendation, rather than an order to marry. But Ghazali stressed, surely in direct response to Makki, that "This is a command!"

In addition to giving the order to marry, God admonished his followers not to prevent other Muslims from getting married. God said: "Place not difficulties in the way

²⁹lit.: Involvement with wife and children may divert attention from one's responsibility to God.

of their marrying their husbands."³⁰ Ghazali interpreted this to be a "prohibition directed at men who try to prevent women from getting married."³¹

Another strong pro-marriage argument that emerges from the Quran is the precedent set by God's saints and prophets. Ghazali described it as follows: "In praise and in description of His prophets, God said: 'We sent messengers (to mankind) before thee, and We appointed for them wives and offspring.'³² Wives and offspring are thus specifically mentioned as a sign of divine benevolence, and a mark of His favour. And God commended his saints for praying for wives and children when He said: 'And who say: Our Lord! Vouchsafe us comfort of our wives and of our offspring.'³³ It is said that God only mentioned married prophets in His Book. John the Baptist reportedly married but never consummated the marriage. [] As for Jesus, he will marry and have children when he returns to this world."³⁴

Among all of God's prophets and saints, the example of the Prophet Muhammad is the most important source of guidance. His living example - he married thirteen women - was unmistakably pro-marriage. And he also repeatedly said that marriage was his way of life (*sunna*) and that whoever liked him should follow his example. Ghazali quoted three *ḥadīth* which carry this message: "The Prophet said: 'Marriage is my way of life (*sunnati*), whoever dislikes my way of life, dislikes me.' He also said: 'Marriage is my example, whoever likes me let him follow my example.' and 'Whoever dislikes my example does not belong to my community.'"³⁵

The Prophet further added that no one should be prevented from following his example by fear of poverty. And in a more affirmative sense, he said: "The man who has the means should marry."³⁶ In traditional Islamic societies, marriage served a vital role. "The entire system of Islamic family law was founded on (legitimate) descent, *nasab*. *Nasab* [] is crucial to the whole complex web of rights and duties that make up

³⁰M.Pickthall, *The Glorious Koran*, Sura 2, Verse 232.

³¹Ghazali, *Iḥyāʾ*, vol.2, p.21.

³²M.Pickthall, *The Glorious Koran*, Sura 13, Verse 38.

³³M.Pickthall, *The Glorious Koran*, Sura 25, Verse 74.

³⁴Ghazali, *Iḥyāʾ*, vol.2, pp.21-22.

³⁵ibid., p.22.

³⁶ibid., p.22.

the vital part of family law. [] Upon *nasab* depend such things as rights of care, custody and guardianship, rights and duties of maintenance and support, responsibility for the tortuous actions of others and help in bearing the burden of one's own liability, and [] rights of inheritance upon succession at death."³⁷ Islamic law proscribes sexual relations outside marriage or concubinage, and any sexual intercourse outside these institutions is seen as a threat to the social order.

Legitimacy of descent was only granted to children born into wedlock or concubinage. Any child born outside it was left a social outcast, deprived of the vital network of family connections and support. Given the importance of legitimate descent, fornication and adultery met with severe punishment, culminating in death by stoning for married offenders caught engaging in extramarital sexual intercourse. In turn, the importance of marriage as the legitimate outlet for sexual energy can thus readily be understood.

¶ Ghazali distinguished between two forms of violation of the rules of sexual behaviour, immorality of the eye (*fasād al-ʿain*) and immorality of the genitals (*fasād al-farj*)³⁸. The first is a euphemism for looking lustfully at a forbidden person³⁹, the second for illegal sexual intercourse. Marriage, as the legitimate framework in which to satisfy sexual desire, can curb sexual immorality. This is why the Prophet emphasized the importance of marriage for all those who had the means. He said: "Whoever can afford to set up and support a household⁴⁰ should get married, because it is the best cure against looking at what is forbidden (*aḡadd li'l-baṣar*) and the best way to protect one's genitals against fornication (*aḥsan li'l-farj*). Whoever cannot afford it should fast, because fasting will suppress his desire for intercourse."⁴¹ And the

³⁷Noel J. Coulson, *Regulations of Sexual Behaviour under Traditional Islamic Law in Society and the Sexes in Medieval Islam*, ed. 'A.Lutfi as-Sayyid Marsot (Undena Press, Malibu, California, 1979), p.63-68; p.67.

³⁸Ghazali, *Iḥyāʾ*, vol.2, p.22.

³⁹anyone other than a man's wife or concubine, or a woman's husband.

⁴⁰lit. *al-bāʾa*, sexual intercourse. But Murtada al-Zabidi explains that the word *al-bāʾa* is derived from *al-mabāʾa*, dwelling, because someone wanting to get married must provide accomodation for the woman; in other words, a man is able to get married when he can afford to provide the house and maintenance; at that point he will be allowed to have sexual relations with the woman. (Murtada al-Zabidi, *Iḥāf al-sāda*, vol.5, p.287).

⁴¹Ghazali, *Iḥyāʾ*, vol.2, p.22; literally: fasting will be like castration (*wijāʾ*) for him. Ghazali explains: "*wijāʾ*" is here used metaphorically to describe the weakening of libido during periods of fasting."

Prophet also said: "If someone whom you find pleasingly pious and trustworthy comes to you (to ask for a woman in marriage), give her to him. 'If ye do not so, there will be confusion in the land, and great corruption (*fasād kabīr*)⁴².'"⁴³

Even more than his social responsibility and his accountability to the other members of his community, the believer must be aware of his accountability to God. Ghazali considered the two human desires most likely to tempt a man to violate religious law to be the desire for sexual intercourse and the desire for food.⁴⁴ As he puts it, "in most cases a man's religion (*dīn*)⁴⁵ is corrupted by his genitals and his stomach."⁴⁶ Marriage is the solution to at least part of the problem, for, in the words of the Prophet "Whoever marries has protected half his religion (*dīn*), so let him fear God for the other half,"⁴⁷ ie. where food is concerned.

Every married person makes an important contribution to the preservation of the Islamic social order as a whole, while also safeguarding his own religion (*dīn*) through obedience of the Law. And so, in the words of the Prophet, "whoever marries and gives in marriage for the sake of God deserves the friendship (*walāya*) of God."⁴⁸

There is a noticeable difference in the way the two authors incorporated this last idea into their discussions. For Ghazali, it was one of the most compelling reasons in favour of marriage, and he emphasized and elaborated the message of the above-mentioned Prophetic traditions through his own comments. In contrast, Makki merely reported these traditions, without offering any additional interpretation or explanation. Makki did comment on one Prophetic tradition, namely the tradition which relates that those who marry or give in marriage for the sake of God deserve God's friendship. But Makki's

⁴²M.Pickthall, *The Glorious Koran*, Sura 8, Verse 73.

⁴³Ghazali, *Iḥyāʾ*, vol.2, p.22

⁴⁴see Ghazali, *Iḥyāʾ*, vol.3, pp.79-107, "Book on the Controlling of the Two Desires" (*Kitāb kasr al-ṣahwatain*).

⁴⁵ defined variably as "the obligations which God imposes on His 'reasoning creatures'", as "the corpus of prescriptions (*aḥkām*) which God has promulgated through the voice of His Apostle", and as "the act of worship, the care to avoid bad and blameworthy deeds, to respect right and justice in social relationships, and to purify the soul and prepare it for the future life; in a word [it consists of] all the laws whose aim is to bring a man near to God". L.Gardet, "Dīn", *Encyclopedia of Islam*, 2nd ed. (Leiden: E.J. Brill, 1965), vol.2, p.293 ff.

⁴⁶Ghazali, *Iḥyāʾ*, vol.2, p.22.

⁴⁷ibid.

⁴⁸ibid.

comment was intended to deflect from the importance of the Prophet's promise, for he added that "this is the least for which (God's) friendship is granted."⁴⁹

Children were considered an inseparable part of marriage and one of its distinct merits. In the Quran, marriage is frequently mentioned in conjunction with children, thus: "...and we appointed for them wives and offspring."⁵⁰ and "Vouchsafe us comfort of our wives and of our offspring."⁵¹ The Prophet said: "Marry and multiply, so that on the Day of Resurrection I can boast about all of you, even miscarriages, before the other nations."⁵² And he also said "Only three human accomplishments retain significance after death: a righteous child that prays for the deceased, [the alms he dispensed and the knowledge he passed on]."⁵³

Many prominent members of the early Muslim community are reported to have spoken in favour of marriage, for reasons which have already emerged from the Quran and Prophetic traditions, such as the precedent set by God's prophets, fear of sexual transgressions and the desire to have children. For some, marriage was so important that they wanted to avoid bachelorhood even for the shortest period of time. Ibn Mas'ud (d. around 652-3), a famous Companion of the Prophet and one of the earliest Muslims⁵⁴, used to say: "Even if I had only ten days to live, I would definitely want to marry, so that I would not meet God as an unmarried man (*ʿazaban*)."⁵⁵ And Mu'adh bn Jabal ⁵⁶, another Companion, who had lost his two wives in the plague, and who himself had been infected, said: "Get me married, because I would hate to appear before God as an unmarried man."⁵⁷

Marriage was clearly understood to be compatible with religious devotion. Umar bn al-Khattab (d.643), the second Caliph, said: "The only obstacles to marriage are weakness (*ʿajz*) and profligacy (*fujūr*).⁵⁸ "Thus making it clear", in the words of

⁴⁹Makki, *Qūt al-qulūb*, vol. 2, p. 238.

⁵⁰M.Pickthall, *The Glorious Koran*, Sura 13, Verse 38.

⁵¹M.Pickthall, *The Glorious Koran*, Sura 25, Verse 74.

⁵²Ghazali, *Iḥyāʾ*, vol.2, p.22.

⁵³ibid.

⁵⁴J.-C.Vadet, "Ibn Mas'ud", *Encyclopedia of Islam*, 2nd.ed. (Leiden: E.J. Brill, 1971), vol.3, pp.873-5.

⁵⁵Ghazali, *Iḥyāʾ*, vol. 2, p.23.

⁵⁶a member of the Khazraj tribe from Yathrib (Medina). (M.Lings, *Muhammad, his life based on the earliest sources*, New York, 1983; p.304).

⁵⁷Ghazali, *Iḥyāʾ*, vol. 2, p.23.

Ghazali, "that religion (*dīn*) is not an obstacle to marriage."⁵⁸ Indeed, several early traditions speak about the superiority, in religious terms, of a married person to an unmarried one. Ghazali reports that "it has been said that the merit of a married man in relation to the unmarried man is like the merit of a person fighting in Holy War compared to the one who stays at home. And it is also said that one single prostration [in prayer] performed by a married man counts more than seventy prostrations performed by a celibate."⁵⁹

Even those who lived celibate lives seem to have admitted to a certain shortcoming on their part. Ghazali related that Bishr bn al-Harith al-Hafi is reported to have said: "Ahmad bn Hanbal⁶⁰ is superior to me for three reasons: he seeks what is good for himself as well as others, and I seek it only for myself; he welcomes marriage, and I avoid it, and he serves the community as leader (*imām*) [while I seek seclusion for myself]."⁶¹ Ghazali also reported that "it is told that, after his death, Bishr appeared to someone in a dream. When asked about how God treated him, he replied: 'I reached high positions (*manāzil*) in Paradise, coming close to the stations (*maqāmat*) of the prophets, but I never reached the high positions (*manāzil*) of the married."⁶² According to another version, Bishr replied: "God reproached me and said: 'I did not want you to meet me as an unmarried man.'"⁶³ Ghazali also reported that a man said to Ibrahim bn Adham: "How lucky you are! Since you are not married, you can devote yourself exclusively to worship." But Ibrahim answered: "The anxiety you experience on account of your family obligations is worth far more than everything that I do."⁶⁴

Nevertheless, men like Bishr bn al-Harith al-Hafi and Ibrahim bn Adham clearly believed that the disadvantages of marriage outweighed its benefits. Even the Prophet is reported to have alerted his followers to certain problems associated with marriage and family obligations. In the fourth and last part of his introductory collection of traditions,

⁵⁸ibid.

⁵⁹ibid.

⁶⁰the famous theologian and founder of one of the four orthodox schools of Islamic law, died 855/ A.H.241.

⁶¹Ghazali, *Iḥyāʾ*, vol.2, p.23.

⁶²ibid.

⁶³ibid.

⁶⁴ibid.

Ghazali listed traditions from the Prophet and early Sufis which argue against marriage.⁶⁵

The Prophet is reported to have said: "The best person after the second century will be the one with a light burden." When asked what he meant, he explained: "The one who has neither wife nor children."⁶⁶ And he is also reported to have said: "A time will come when a man will be led to destruction by his wife, parents and children, who will reproach him for his poverty and demand of him what he is unable to provide. This will make him do things which will violate his religious principles (*dīn*), and earn him eternal damnation (*fayahliku*)."⁶⁷

The Prophet had addressed a problem that was to be taken very seriously by the early Sufis. Marriage undoubtedly brings heavy obligations. Under Islamic law, the husband is responsible for the financial support as well as the moral and religious well-being of his dependant women and children. However, the early Sufis took to extremes God's words "There is no God but Allah (*lā ilāha illā allāh*)", allowing no worldly concerns whatsoever to come in between the believer and God, and distract his attention from Him. Consequently, their most prominent characteristic was an adherence to the strictest ascetic principles. A. Schimmel said: "The stories of the degree of asceticism achieved by these early Sufis sound somewhat incredible to the modern mind; yet they counted it happiness to live completely free of wordly things, even though they might use only a brick for a pillow [] and a worn out mat of straw for a bed."⁶⁸ These men possessed no worldly goods, had often given away wealth they had previously owned, and depended for their small livelihood on the charity of others.

This strict asceticism was incompatible with the obligations of a husband and father of a family. So when Abu Sulaiman ad-Darani was asked about marriage, he replied: "I have not seen one of our companions who married and remained in his former rank

⁶⁵ibid., p.24, "*al-targīb ʿan al-nikāḥ*".

⁶⁶ibid.

⁶⁷ibid.

⁶⁸A.Schimmel, *Mystical Dimensions of Islam* , p.37.

(*martaba*)⁶⁹ as a Sufi."⁷⁰ And he also said: "The celibate finds in the sweetness of devotion and freedom of mind⁷¹ something the married man can never find."⁷²

The early mystics' aversion to marriage went hand in hand with certain misogynist views. Abu Sulaiman ad-Darani is reported to have said: "To cope without women is better than to cope with them, but to cope with them is better than to endure the fire of Hell."⁷³ Makki also expressed strong misogynist sentiments in the *Qūt al-qulūb*. Indeed, Makki gave a lucid explanation of the Sufis' reasons for preferring celibacy. He argued that "solitude (*kalwa*) is better for the believer, because when he is alone, he can delight in the experience of God's Presence (*yajidu liḍḍat al-wujūd*)⁷⁴ and the sweetness of communication with Him (*ḥalāwat al-mu^cāmala*)."⁷⁵ In other words, it is only through solitude that a believer can reach the heights of the mystical experience.

Makki continued: "[Only] solitude allows the believer to concentrate [exclusively] on the state of his own soul. He does not have to worry about someone else's spiritual state (*ḥāl*), [] nor does he have to be concerned with any satan but his own.[] A man already has enough to do fighting his own self, his own whims and his own enemies."⁷⁶ This argument has to be seen in the context of the man's responsibility for the moral and religious well-being of his dependants.

As a third reason in favour of celibacy Makki gave the difficulty of earning (and spending) money. He said: "Ways of earning a living have become corrupted, so that money can almost only be earned by sinful means."⁷⁷ The man is responsible for how

⁶⁹the mystical ascent to God is classified into stages (*maṣātib*).

⁷⁰Ghazali, *Iḥyāʾ*, vol.2, p.24.

⁷¹lit.: emptiness of the heart (*farāḡ al-qalb*), an inevitable condition for proximity to God. Alternative translations: "Was der Alleinstehende an Lieblichkeit der Anbetung und an ungestörter Hingabe des Herzens fühlen kann, das kann der Verheiratete niemals erfahren." (Tor Andrae, *Islamische Mystik*, p.61). "The solitary will find in the sweetness of work and in freedom of mind, what the married man does not find" (M.Smith, *Rabi'a the Mystic And Her Fellow Saints in Islam* (CUP, 1984), p.168).

⁷²Ghazali, *Iḥyāʾ*, vol.2, p.24.

⁷³ibid.

⁷⁴*wujūd*: "finding", existence (A.Schimmel, *Mystical Dimensions of Islam*).

⁷⁵Makki, *Qūt al-qulūb*, vol.2, p.238.

⁷⁶ibid.

⁷⁷It is beyond the scope of this study to assess whether Makki's perception of the economic situation as difficult was shared by his non-Sufi contemporaries, or whether his perception was more the result of the ascetic's general aversion to the acquisition of worldly goods.

he earns his money, and how he spends it. If he earns it illegally, God will hold it against him, and if he spends it irresponsibly, God will not credit him for it."⁷⁸ The problem of earning and spending money only arises for someone who has dependants, while the unmarried ascetic is unencumbered by such concerns. Indeed, for Makki, the financial aspects of marriage posed an insoluble dilemma; in order to support his family, a man needs to possess wealth. However, in Makki's view, "rich people are [by definition] oppressors of the poor"⁷⁹ and condemnable for that very reason. If, however, a married man is poor, he encounters endless hardship and trouble in the pursuit of a livelihood for himself and his family. The only obvious solution to this problem is to remain celibate.

Makki's misogynist sentiments largely result from his fears of women's bad influence on men. Makki argued that it was better for men to avoid women, for "most women are irreligious and unscrupulous (*qalilāt al-dīn wa al-salāh*), and their most predominant characteristics are ignorance and caprice. This means that the man is never safe: if he yields to women [s wishes] because he likes them, then he loses any hope of salvation. And if he opposes women, they will deceive and disobey him and his life on earth will be troubled."⁸⁰ Given Makki's many apprehensions about marriage, it is understandable why he described solitude "as the condition that is most relaxing for the heart and brings the least anxiety."⁸¹

However, some early Sufis saw a potential for compromise. Ghazali related: "Hasan al-Basri (d.728) said: 'If God wishes his servant well, he does not preoccupy him with a family or wealth.'" Commenting on this, Ahmad bn Abi 'l-Hawari (d.851), a student of Abu Sulaiman ad-Darani, said: "Scholars have discussed this tradition and decided that its meaning is not that the man should therefore have neither family nor wealth; rather, he can have both, but they should not distract him."⁸²

⁷⁸Makki, *Qūt al-qulūb*, vol.2, p.238.

⁷⁹ibid.

⁸⁰ibid.

⁸¹ibid., p.239.

⁸²Ghazali, *Iḥyāʾ*, vol.2, p.24.

GHAZALI'S AND MAKKI'S ARGUMENTS IN FAVOUR OF MARRIAGE AND CELIBACY

Children:

Of all the benefits of marriage, Ghazali considered children to be the most important.

He said: "Progeny is the basic reason for which marriage was established."⁸³ The reasons why marriage was the legal framework for procreation to take place have been mentioned previously.* An alternative arrangement would have been concubinage; however, Ghazali does not include concubinage as an option in his discussion.

Therefore, according to Ghazali, if a man wanted to have children, he had to marry.

And he should want to have children for the following four reasons: "First of all, by striving to have progeny that will maintain the human race, a man fulfils the will of God."⁸⁴ Ghazali argued that God endowed human beings with the ability to procreate and the strong desire to engage in sexual intercourse in order to guarantee the survival of His creation. If it were not for procreation, the human race would disappear.

Therefore anyone who does not at least provide the conditions in which procreation could take place - in other words, who does not marry - "ruins a lineage (*nasl*) that God has kept alive since the time of Adam, one generation after another, until it reached him. Because he who refuses to marry has cut the line of human existence that stretched all the way from the creation of Adam to himself."⁸⁵ It follows that anyone who does marry and have children pleases God by fulfilling His will, and can expect to be rewarded for it.

Ghazali compared the human ability to procreate to the farmer's ability to cultivate his land and grow provisions: "Imagine a master handing over to his slave seed and the tools required for cultivation (*hirāṭa*), and preparing arable land for him. Imagine further that this slave is able to do agricultural labour, and that the master appoints a supervisor for him who will check on him. If this slave is lazy, neglects the tools and leaves the seed until it is spoilt, and, through some trick, rids himself of the supervisor,

^{see}
* ʔf. 39-40.

⁸³ibid., p.24.

⁸⁴ibid.

⁸⁵ibid., p.25.

then he surely deserves his master's hatred and reproach."⁸⁶ And Ghazali explains further: "God created the male and the female (*al-zaujain*). In the male, He created the penis and testicles, and semen in the spine, and He prepared for the semen veins and passages in the testicles. And in the female, He created the womb as a dwelling and repository for the semen. Then He imposed the demands of sexual desire on each and every male and female. These functions and organs eloquently profess the intention of their Maker and invite the intelligent to recognize what they were made for. And did the Creator not explain His intention through the words of His Messenger, who said: 'Marry and multiply.' How much more, since He has given an explicit command and revealed the secret, is everyone who does not marry guilty of shunning procreation⁸⁷, wasting the seed and neglecting the special tools God created."⁸⁸

The role of sexual desire, by virtue of its irresistible power, is to compel mankind to engage in sexual intercourse. Sexual desire was thus seen to be a positive force for the important role it plays in God's scheme for the creation. Ghazali explained: "God created sexual desire as a provoking incentive, responsible in the male for the emission of seed and in the female for acceptance of the fruit."⁸⁹ According to Ghazali, God lures human beings into procreation with sexual desire, as birds are lured into a trap with tasty seeds.

Secondly, Ghazali encouraged the believer to have children in order to "please the Prophet by increasing the number of those who will be his pride."⁹⁰ For the Prophet had told his followers to "marry and multiply", so that Muslims would outnumber the followers of other religions on the Day of Resurrection.⁹¹ Another aspect of the importance of children was the belief that religious merit could be gained from leaving behind a virtuous child to pray for the deceased. And fourthly, parents could hope for the child's intercession with God on their behalf if the child died before them. The

⁸⁶ibid., p.24.

⁸⁷lit.: cultivation (*ḥirāʿa*).

⁸⁸Ghazali, *Iḥyāʾ*, vol.2, p.25.

⁸⁹ibid., p.24.

⁹⁰ibid.

⁹¹ibid., p.22.

Prophet is reported to have said: "When the child is told to enter Paradise, he will stop at the Gate in fury - *muḥbantiʿan*, i.e. full of rage and anger - saying 'I shall not enter Paradise unless my parents come with me'. So the Angels are told 'Admit his parents to Paradise, too.'"⁹²

Both Makki and Ghazali made references to the importance of children as a source of pride for the Prophet, as keepers of their parent's memory and as potential intercessors on behalf of their parents on the Day of Judgement. But Makki never mentioned Ghazali's religious argument about procreation. This is conceivably the most compelling argument in favour of marriage, revealing its vital role in perpetuating mankind. It is therefore likely to have been in response to Makki's omission that Ghazali took so much care to explain to his readers the importance of human procreative potential, and the related function of sexual desire, in the divine world order. Ghazali described sexual desire as a life-giving and positive force, intentionally designed by God to be one of the strongest human passions in order to guarantee procreation. But the strength of sexual desire also poses one of the most serious threats to the believer's journey towards God.

Protection from sin

"In his teaching on the human soul and its relation to God, Ghazali maintains [] that it was pre-existent, before its attachment to a material body, that it has something of the Divine within it, and is immortal. He gives it different names - soul, spirit, heart [] but all mean the same things, which is the real essence of man (*ḥaqīqat al-Ādamī*), that which differentiates him from the lower creation."⁹³ "For it is the heart", Ghazali said, "which knows God, which approaches Him, which works for God and strives after Him and to which God reveals Himself and His attributes".⁹⁴

However, the heart can fulfil these functions only if it is healthy, that is, if it is filled with love of God and free of any concern other than God. It follows that the heart of anyone who loves anything more than God is sick. This sickness is caused by desire

⁹²ibid., p.26.

⁹³M.Smith, *Ghazali the Mystic*, pp.141-142.

⁹⁴ Ghazali, *Iḥyāʿ*, vol.3, p.2.; see also M.Smith, *Ghazali the Mystic*, p.142 .

and attachment to the world. It is only after man has truly liberated himself from the trappings of pleasure and worldly concerns that his soul is free to return to its Maker. "At that point," Ghazali said, "the contented self (*al-nafs al-muṭmaʿinna*) returns to her Lord. Happy and content it joins the group of those believers who are close to God, the Prophets, [the martyrs and the righteous forefathers]."95

A man's fight against worldly desires was expressed by the Sufis as a struggle against his lower self, "the soul which enjoineth unto evil" (*al-nafs al-ammāra biʾl-sūʾ*)96. The Prophet described this struggle as *al-jihād al-akbar*, the great(est) Holy War, as opposed to the fight against the infidels, which he called the small(est) Holy War, *al-jihād al-aṣḡar*.97 According to Ghazali, the battle with his soul should be the novice's first and foremost concern. Ghazali exhorted the novice to discipline his soul with spiritual exercise (*riyāḍa*), training it to abandon all desires for the amenities of this world.98

The early Sufis had tried to fight their "lower selves" through observance of the strictest ascetic principles. In Ghazali's view, however, detachment from worldly pleasures was not to be obtained simply by following ascetic principles. Ghazali argued that the secret to true abandoning of worldly concerns lies in the pursuit of moderation (*al-iʿtidāl*). He understood excessive behaviour to be a sign of worldly attachment and dependence, including both excessive desire as well as extreme asceticism. It is only through observance of moderate behaviour that a man can hope to find the mean (*al-waṣaṭ*), which Ghazali equated with *al-ṣirāṭ al-mustaqīm*. "The true mean (*al-waṣaṭ al-ḥaqīqī*)", he said, "is very difficult to make out, being thinner than a hair and sharper than a sword."99 For that reason, every believer should appeal to God for guidance seventeen times a day with the words "Guide us along the right path (*ihdīna al-ṣirāṭ al-mustaqīm*)."¹⁰⁰

⁹⁵Ghazali, *Iḥyāʾ*, vol.3, p.62 ff.

⁹⁶this description is taken from the Quran: M.Pickthall, *The Glorious Koran*, Sura 12, Verse 53 : *al-nafs laʾammāratu biʾl-sū* "Lo! the (human) soul enjoineth unto evil"; also see Ghazali, *Iḥyāʾ*, vol.3, p.4.

⁹⁷Ghazali, *Iḥyāʾ*, vol.3, p.66.

⁹⁸Ghazali, *Iḥyāʾ*, vol.3, pp. 48-79, Book on the Training of the Soul (*Kitāb riāḍat al-nafs*).

⁹⁹Ghazali, *Iḥyāʾ*, vol.3, p. 63.

¹⁰⁰ibid., p.64.

Of all the desires emanating from the lower self, Ghazali considered sexual desire to be the strongest. The control of sexual desire is essential, since a person preoccupied with the pursuit of sexual pleasure is focused on the world rather than on the worship of God and the Hereafter. At its worst, excessive desire can turn into romantic love (*ʿiṣq*). The romantic lover focuses all his attention on the beloved, in the belief that his desire can only be satisfied by this one person. "This", Ghazali said, "amounts to indulgence in animal nature far beyond what beasts would do."¹⁰¹ For the beast is content to satisfy its desire where it can, while the romantic lover makes himself the slave not only of his passion but of a single human being.

At the same time Ghazali saw a danger in leaving sexual desire unfulfilled. He gave two reasons: first of all, he said, "if sexual desire becomes overwhelming, and is not controlled by fear of God, it will lead to fornication (ie. unlawful sexual intercourse)"¹⁰², a capital offence *ḥadd*. Numerous traditions quoted by Ghazali speak of the near-impossibility of controlling the sexual urge with reason alone. In the words of a certain Fiyad bn Najih: "When a man is aroused, he loses two thirds of his mind."¹⁰³ And 'Ikrima and Mujahid, both slaves of Ibn Abbas, are reported to have interpreted God's words "Man was created weak"¹⁰⁴ to mean that he cannot resist women.¹⁰⁵ Ghazali himself describes sexual desire as the devil's strongest weapon against the human race.¹⁰⁶ Secondly, even if a man is able to prevent himself from committing the actual sin of fornication, Ghazali said, "he cannot prevent temptation and thought from entering his heart (*qalb*). No, his soul (*nafs*) still struggles with him and distracts him with sexual phantasies [] until the man's mind is preoccupied with sexual phantasies of a kind that, if said aloud, would cause embarrassment to the basest creature. God, however, knows all about a man's heart []

¹⁰¹Ghazali, *Iḥyāʿ*, vol.3, p. 100.

¹⁰²Ghazali, *Iḥyāʿ*, vol. 2, p. 28.

¹⁰³ibid.

¹⁰⁴M.Pickthall, *The Glorious Koran*, Sura 4, Verse 28.

¹⁰⁵Ghazali, *Iḥyāʿ*, vol. 2, p. 28.

¹⁰⁶ibid.

and what is most important for the novice in advancing along the path to the Hereafter is his heart."¹⁰⁷

The mystic's declared aim is to liberate himself from all thoughts other than the thought of God. But Ghazali recognized that the ascetics' approach of suppressing sexual desire through celibacy often failed to achieve this aim, leaving the mind preoccupied with sexual phantasies. In his view, the mind's preoccupation could only be stopped through fulfilment of the desire (without excess). Thus in a situation where the ascetic wastes precious time in sexual phantasies and self-castigation, peace of mind to worship God can be restored and sexual preoccupation eliminated directly and efficiently by having sex, albeit legitimate sex. Ghazali quoted a story that serves to illustrate this argument: When a pious man was criticised for his frequent marriages, he replied: "Has any of you had the experience of sitting or standing, engaged in prayer and then a lustful thought entered his heart?" Those who had criticised him answered that this happened to them frequently. To this the pious man replied: "If I had once in my life accepted a situation like yours, I would not have married. But now, as soon as a distracting thought enters my heart, I act upon it and get relief, and then I go back to my prayers. For forty years, no sin has entered my heart."¹⁰⁸

Under traditional Islamic law, legitimate sexual intercourse can only take place within marriage or concubinage. Sexual satisfaction thus became Ghazali's second argument in favour of marriage, after the argument of procreation. "Marriage", he declared, "because it averts the dangers of sexual desire, is important for the religion (*dīn*) of everyone who is not afflicted by incapacity or impotence, and that is the majority of people."¹⁰⁹ For this reason, and in view of the serious threat unfulfilled sexual desire poses to both the social order and the religious obedience of the individual, Ghazali sanctioned marriage with slaves for those who cannot afford marriage to a free woman. Islamic law grants a man the right to marry a slave owned by another person. Under this arrangement, the husband's access to the woman is limited

¹⁰⁷ibid.

¹⁰⁸ibid.

¹⁰⁹ibid.

to an agreed period of time each day or week, and his responsibility for the woman's maintenance is proportional to the time he spends with her. However, any children resulting from the union become the property of the woman's owner, and inherit her slave status. For this reason, Ghazali had disapproved of marriage to a slave woman, but admitted that "the life of the child is spoilt temporarily, but fornication results in the loss of life in the Hereafter, and the longest life on earth is nothing in comparison to one day of the afterlife."¹¹⁰

The sexual needs of human beings vary. Islamic law provides for different needs by allowing a man to be married to up to four women simultaneously, and by sanctioning divorce and remarriage for both partners. Ghazali approved of this regulation, in recognition of the evidence that "in some people sexual desire is so strong that one woman cannot satisfy them."¹¹¹ He said: "Whenever the cause of an illness¹¹² is known, the treatment must be adequate. The aim here is to pacify the soul, and that should be kept in mind when deciding whether to marry many women or few."¹¹³

So far, a two-dimensional view of sexual desire has emerged. Sexual desire is intrinsically good as the procreative force responsible for the survival of the species. At the same time, however, and as a direct result of its strength, it is one of the prime causes of human disobedience to divine law, and as such problematic. Ghazali argued that moderate fulfilment of the desire could help to reduce its distracting influence.

But Ghazali also added another dimension. He argued that through the experience of sexual pleasure human beings can have something tangible by which to measure, or anticipate, the pleasure of Paradise. He said: "This pleasure, if it lasted, would be stronger than all other pleasures. As such it is a harbinger (*munabbih*) of the delights promised in Paradise."¹¹⁴ The reader should not be misled ^{into} believ^{ing} that Ghazali thought of Paradise as one perpetual orgasm. No earthly pleasure is comparable to the pleasures of Paradise. Rather, he explained that in the same way that fire and the pain of

¹¹⁰ibid., p.29.

¹¹¹ibid., p.30.

¹¹² in this case, impurity of the heart resulting from sexual phantasies and insinuations.

¹¹³Ghazali, *Iḥyāʾ*, vol.2, p.30.

¹¹⁴ibid.,p.27.

being burned can give in this life a palpable sense of punishment in the afterlife, sex and its pleasure can give a palpable sense of the heavenly rewards, thus providing human beings with the strongest incentive to lead a proper religious life. "This pleasure", Ghazali said, "which diminishes and ends fast, arouses a longing for the perfect pleasure which is everlasting, and thus encourages the kind of devotion that will lead to it."¹¹⁵ This is so because mere verbal threats of punishment, and verbal promises of reward, will fail to impress humans in the way actual experience can.

Makki's discussion of marriage does not reveal an equally diverse and balanced view of sexual desire. In the tradition of the ascetics, Makki considered sexual desire to be a nuisance that should be eliminated through suppression rather than satisfaction. Although he acknowledged the role marriage can play in satisfying and thus silencing desire, he expressed contempt for those who do not possess sufficient self-control and so need to resort to marriage. Makki said (quoting his master Abu 'l-Hasan 'Ali bn Salim, d.909¹¹⁶): "In times like ours, marriage is good only for the man whose sexual lust is of the same kind as the sexual lust of a donkey. A donkey, when he sees a she-ass, loses all self-control and jumps on her, and even beatings on the head will not make him let go of her. If a man fits this description, marriage is better for him."¹¹⁷

According to Ghazali, the believer must consider not just the benefit of sexual satisfaction as a safeguard against social and religious evil, but also the intrinsically positive attributes of sexual desire. His decision whether to marry or not must be influenced by the awareness that he wastes his procreative potential if he does not marry. For Makki, this aspect of marriage was of no apparent significance.

The Company of women - companionship and distraction

Ghazali further believed that time spent in the company of one's spouse could serve as a useful repose from intense periods of meditation. He called this third benefit of marriage "relaxation for the soul (*tarwih al-nafs*)". The spiritual training of the Sufi novice is arduous. He spends much of his time in seclusion, engaged in prayer and

¹¹⁵ibid.,p.28.

¹¹⁶A.Schimmel, *Mystical Dimensions of Islam*, index.

¹¹⁷Makki, *Qūt al-qulūb*, vol.2, p. 240.

meditation. Ghazali recognised that ordinary human beings are unable to sustain high levels of concentration over long periods of time. For that reason he recommended the interruption of meditation with the leisure and enjoyment which a married couple can "derive from keeping each other company, looking at each other and joking together."¹¹⁸ But Ghazali admitted that "there is many a person who relaxes at the sight of flowing water, plants or other natural phenomena, and so does not depend for his relaxation on conversation and amusement with women."¹¹⁹ Ghazali also pointed out that this benefit of marriage can turn into a detriment if the believer ends up "totally immersing himself in amusement and intimacy with women and completely devoting himself to their enjoyment,"¹²⁰ in other words, when the virtue of distraction turns into the vice of preoccupation because the believer has been unable to observe the principle of the mean.

Ghazali, even though he warned the novice against overindulgence, appreciated the benefits that can be found in women's company. In contrast, Makki seemed to suggest that this benefit of marriage had been relevant for earlier generations, but no longer applied in his own time. Part of Makki's pro-celibacy argument is his claim, shared by other Sufis, that women had changed for the worse, and that their company, and thus marriage, was to be avoided for that reason.¹²¹ He said "In the old days, women used to be different from today."¹²² They had been pious and less demanding, content to endure hardship rather than encourage a man to earn money illegally.¹²³ But women's morals had deteriorated and their demands increased, fulfilling the Prophet's alleged prophecy that "a time will come when a man will be led to destruction by his wife, his

¹¹⁸Ghazali, *Iḥyāʾ*, vol.2, p.30.

¹¹⁹ibid.

¹²⁰ibid., p.34. *istulaled*

¹²¹Ghazali recapt~~ured~~ this view in his introduction, where he described the position of the advocates of celibacy as: "Finally others said that in times like ours it is best to avoid marriage [altogether]. Marriage used to have its merit in the past, when [] women's morals [were] not blameworthy." Ghazali, *Iḥyāʾ*, vol.2, p.21.

¹²²Makki, *Qūt al-qulūb*, vol.2, p. 247.

¹²³ibid., Makki quoted three traditions describing the virtues of women of previous generations. He did this in order to show the extent to which women had changed for the worse. Ghazali, who did not support the view that women were any worse today than they used to be, repeated these three traditions, but only in order to portray the behaviour of women of previous generations as a good example to be followed by the women of his own time. Ghazali, *Iḥyāʾ*, vol.2, p.58.

parents and his children, reproaching him for his poverty and demanding of him what he is unable to provide. This will make him do things which violate his religion (*dīn*), and then his fate will be eternal damnation (*fayahluku*)."¹²⁴ For the ascetics among the Sufis, the Prophet's warning together with his words that celibacy would be permitted to his community after two hundred years, counteracted his strong personal example and exhortations in favour of marriage.

Housekeeping

Yet another benefit of marriage derives from the fact that, on a very practical level, a wife was needed for maintaining the household. Ghazali pointed out that a man living alone would be burdened with "managing the household", with "cooking, sweeping, making beds, cleaning the dishes and keeping general order".¹²⁵ In that case, however, he would find no time for study and work. An Islamic marriage is governed by considerations of a very practical kind. Husband and wife form an economic union, to which each makes a clearly defined contribution. Of particular importance for Ghazali is the peace of mind enjoyed by a man who knows that his household is run smoothly and competently. Such a person is able to concentrate in his worship. "For that reason", Ghazali said, "a righteous wife who is a good housekeeper is a supporter of religion (*dīn*), for disorder in the household disturbs the heart and troubles one's life."¹²⁶

In addition, the individual's social network is primarily based on the immediate and extended family. A man's sense of security is thus enhanced "through the addition of the wife's relatives, and he gains strength through their support."¹²⁷

Obligations within marriage.

These arguments in favour of marriage have strong social and communal elements. In the company of his wife a man can find relaxation and comfort, and the extended family offers him security and support. Many elements of the Islamic faith share this social dimension. The obligatory giving of alms (*zakāh*), the pilgrimage to Mekka (*ḥajj*) and

¹²⁴Makki, *Qūt al-qulūb*, vol.2, p.239.

¹²⁵Ghazali, *Iḥyāʾ*, vol. 2, p.31.

¹²⁶ibid., p.31.

¹²⁷ibid., p.31.

the concept of a community of all believers, the *umma*, all point to the importance placed on human interdependencies. A believer must do his personal prayers, but he is also obliged to fulfil his financial and social obligations towards others, his family and the community. A man's relationship to his dependant women and children has been likened by the Prophet to that of a shepherd to his flock. He is reported to have said: "Is not each of you a shepherd responsible for his flock?"¹²⁸ Under Islamic law, the male head of the household has absolute authority over his dependants; however, at the same time he is fully responsible for them in all areas of life. They depend on him for financial support, for instruction on moral and religious conduct, and for upbringing and education.

Many Prophetic traditions describe how the fulfilment of his responsibilities can be a source of religious merit for the man. "The money a man spends on his family is counted as alms, and he will be rewarded for each morsel he puts in the mouth of his wife."¹²⁹ And also "Whoever prays well, has a large family and little money, and does not slander other Muslims will be in Paradise with me (ie. the Prophet)[]."¹³⁰

Ghazali also believed that the responsibilities of marriage can improve a man's character. It is the husband's duty to fulfil his obligations towards his wives, to patiently endure their tempers, to put up with any trouble they cause, to make an effort to improve their character and to guide them towards a religious life.¹³¹ As head of the household he is also responsible for earning an income and for the proper upbringing of the children. In the process, he can learn to discipline and control himself: "Patient endurance of such things trains the self (*nafs*), helps to control anger and improves one's character. Because someone who keeps to himself or only associates with those who have a good character, is never confronted with the evils hidden in his soul (*nafs*), and his inner faults are never revealed. And so anyone who follows the mystic way (*sālik ṭarīq al-ākira*) must ~~try~~^{test} himself by exposing himself to challenges of this

¹²⁸ibid., p.31.

¹²⁹ibid., p.32.

¹³⁰ibid., p.32.

¹³¹ibid., p.31.

kind and learning to endure them patiently, so that his temper becomes moderate, his self is trained and his inner being is cleared of reprehensible traits."¹³² For that reason, Ghazali believed that "someone who strives to improve himself as well as others is superior to someone who is only engaged in improving himself, and someone who patiently puts up with trouble is superior to someone who enjoys comfort and ease."¹³³ In other words, character training of this sort could be an important component of the spiritual training.

Nevertheless, Ghazali did not advise everyone to marry for this purpose. He believed that only two kinds of men could profit from this benefit of marriage. First of all, the man whose acts of worship are only outward, who neither studies nor meditates. For such a person, "the efforts he makes in earning a legal income to support his wife and children, and to raise them properly, gain him more merit than the obligatory physical acts of worship which help no one but himself."¹³⁴ Secondly, a man at the beginning of his spiritual quest could profit from the challenges of family life as a way to discipline and train his soul. But someone who already "leads a spiritual life and eagerly meditates on contemplative knowledge"¹³⁵ need not marry for this purpose. For such a person, learning and teaching is more meritorious than the material care for a family.¹³⁶

Ghazali cautioned that a man might be unable to live up to the challenges and obligations of marriage. In such a case, the potential benefit of marriage could turn into a detriment. The Prophet addressed this problem when he said: "A man has already committed a sin if he neglects those in his care."¹³⁷ Very pronounced was the fear of being unable to fulfil moral responsibilities. Ghazali said: "A human being is sometimes unable to fulfil his obligations towards himself; if he marries, his obligations multiply, and another soul is added to his own. But 'the (human) soul enjoineeth unto evil' (*al-*

¹³²ibid., pp.32-33.

¹³³ibid., p.32.

¹³⁴ibid., p.33.

¹³⁵ibid.

¹³⁶at this point, Ghazali could well be talking about himself. He left his own family, to devote himself to meditation, study and the writing of books!

¹³⁷Ghazali, *Iḥyāʾ*, vol. 2, p.33.

nafs ammāra^{tun} bi^ʔl-sū^ʔ)¹³⁸, and so the greater the number of souls, the more they are likely to incite to evil."¹³⁹

In many ways, Ghazali's discussion of this issue- of a man torn between his social obligations and the fear of being unable to fulfil them well- was influenced by Makki's argument. Makki, for his part, had been clearly convinced that a man cannot fulfil his obligations towards dependants without jeopardizing his own spiritual integrity. Already on the second page of his discussion he said: "A man has enough to do with the disciplining of his own soul."¹⁴⁰ "Solitude", he argued, "is better, because then the man is occupied with his own soul, concerned with his own spiritual state, and not with the spiritual state of another person."¹⁴¹

Makki twice repeated a tradition from Bishr al-Hafi in which Bishr is reported to have said: "I am prevented from marrying by these words of God: 'And they (women) have rights similar to those (of men)'¹⁴², and I fear that I cannot fulfil these rights."¹⁴³ Given Makki's view of women, it is not surprising that, like Bishr, he considered it impossible to fulfil women's demands! Makki said: "By my life, a woman requires a great amount of gentle courtesy (*fadli mudārātⁱⁿ*), high-minded wisdom (*latīfa min al-ḥikma*), excessive amounts of compassion (*ṭaraf min al-muwāsāh*), a whole chapter of kindness (*bāb min al-mulāṭafa*), a great amount of maintenance (*itisā^c sadr li^ʔl-nafaqa*), good temper (*husn al-ḳalq*) and sweet words (*luṭf al-lafẓ*)."¹⁴⁴ He also said: "Women require a lot of gentleness in order to bear their foolishness, and abundant knowledge in order to cover their ignorance, and kindness and wisdom in order to coax their tempers, and the ability to ignore their mistakes."¹⁴⁵

And so Makki concluded that "only an experienced and wise man will be able to respond to women's needs and requirements. Someone who has never had to deal with

¹³⁸as described in the Quran: M. Pickthall, *The Glorious Koran*, Sura 12, Verse 53.

¹³⁹Ghazali, *Iḥyā^ʔ*, vol. 2, p.34.

¹⁴⁰Makki, *Qūt al-qulūb*, vol.2, p.238.

¹⁴¹ibid.; N.B.: Ghazali used the very same argument.

¹⁴²M.Pickthall, *The Glorious Koran*, Sura 2: Verse 228.

¹⁴³Makki, *Qūt al-qulūb*, vol.2, p. 238, p.241.

¹⁴⁴ibid., p.247.

¹⁴⁵ibid., p.248.

women, who has not made provisions in the form of savings, who is not used to living in a community but has grown fond of his solitude and used to eating alone, who is impatient (lit.: narrow-hearted: *ḍayyiq al-qalb*), stingy (*baḳīl al-kaff*), bad-tempered (*sūʿ al-ḳalq*), insensitive (*ḡalīz al-qalb*), and impolite (*fazḏ al-lafḏ*); for someone like him, solitude is better and distance from women more suitable for him."¹⁴⁶

Ghazali took into consideration Makki's misgivings in his own description of the problematic aspects of a marriage relationship. He admitted that it is difficult for most people to be tolerant and compassionate. But Ghazali sounded much less despondent. In addition, he seemed to be directly responding to Makki when he emphasized the potential for character improvement in marriage for "someone who (normally) keeps to himself"¹⁴⁷. Ghazali argued that such a person, in particular, could profit from exposing himself to the challenges of family life rather than shunning his responsibilities and indulging in his solitude.

But even Makki suggested that certain people, namely those who possess a stubborn soul (*naḑs al-ammāra*), could benefit from marriage. Because, he said, "if someone who has no wives nor children is distracted from God by his own idleness, and his total absorption in pleasure prevents him from pursuing those things dear to God, then he is worse off than a married family man"¹⁴⁸.¹⁴⁹

Ghazali made an effort to portray this issue in all its complexity, with one section devoted to the beneficial aspects of family obligations ("Training of the self"), and another section dealing with its problematic sides ("Failure to fulfil moral responsibilities"). For him, the individual believer had to ask himself whether he would benefit from or be harmed by these obligations. Makki, however, was convinced that the detriments of family obligations generally outweighed their benefits. Nevertheless, almost all the traditions Ghazali used in both sections had already been

¹⁴⁶ibid., p.247.

¹⁴⁷Ghazali, *Iḥyāʿ*, vol.2, p.33.

¹⁴⁸ie. who at least earns merit for supporting his family.

¹⁴⁹Makki, *Qūt al-qulūb*, vol.2, p.249.

mentioned by Makki. In other words, Makki had also reported traditions, from the Prophet and other prominent members of the community, which stress the meritorious aspects of family duties. But Makki reduced the impact of these pro-marriage traditions by placing them after he had already stated his clear preference for the solitary life. Ghazali reorganized Makki's material, dividing it into two separate chapters. Through this process of rearranging, Ghazali shows how some of the traditions can be used to support different arguments. In Makki's text, the following anecdote about one of the Israelite prophets appeared in a section describing the evils of women and family obligations. "It is related in one of the stories about the prophets that a group of people came to visit Jonah, who entertained them as his guests. He was going about the house, while his wife abused him and ordered him about, which he accepted quietly. His guests were surprised to see this, so Jonah explained: 'Don't be surprised. I asked God to let me suffer on earth whatever punishment He intended for me in the Hereafter. God answered: 'Your punishment is the daughter of so and so, whom you will have to marry.' So I married her, and patiently endure what you see her doing.'"¹⁵⁰ Ghazali, in contrast, placed this story in his chapter on character training and self-discipline. For him, this became an example of how patient endurance can train the self!

Financial burden

But Ghazali's most serious argument against marriage was the difficulty of earning a legal income, "the first and most serious evil of marriage is the great difficulty of earning a legal income. Not everyone is able to do so, especially not in our times, where life has become so unstable."¹⁵¹ In times of economic hardship, the man's obligation to provide a living for his family can become positively debilitating. When legitimate means are scarce and insufficient, he might be forced into unlawful ways of earning a living. This is a very serious offence on two counts; not only does the man forfeit his personal salvation by transgressing religious law - which Ghazali describes as selling his afterlife for the life of this world - but he also implicates his family

¹⁵⁰Ghazali, *Iḥyāʾ*, vol.2, p. 32; Makki, *Qūt al-qulūb*, vol.2, p.239.

¹⁵¹Ghazali, *Iḥyāʾ*, p.33.

dependants as well. Since they derive their livelihood from his income, they partake in his sin.

This problem can only be evaded by someone who possesses a large amount of inherited wealth, or previously owned capital, or "someone with an occupation which allows him to earn his living lawfully, such as gathering firewood or hunting, or someone employed in a craft without connection to the ruling elite, allowing him to deal with decent people."¹⁵²

It is noticeable that Ghazali accepted the economic argument, ^hwich had also been mentioned by Makki, without further qualifications. Makki and Ghazali, and also Hujwiri, described their own times as economically difficult and unstable.

GHAZALI'S CONCLUSION:

For Ghazali, the rule of life was moderation in all things. It is his overriding ethical principle, applied to all matters under discussion in the *Iḥyāʾ*. In the *Kitāb ādāb al-nikāḥ*, he implicitly attacked the strict adherence of Islamic orthodoxy to the letter of the law, as well as the extreme ascetic principles of Makki and Hujwiri. Instead, given that the merits of marriage were disputed, Ghazali exhorted his reader to carefully consider the arguments of both sides, and then to make an independent, "balanced" choice depending entirely on his personal circumstances. For further guidance, Ghazali concluded his discussion of the advantages and disadvantages of marriage with a number of case examples, describing several possible situations in which the believer could find himself. Essentially, Ghazali advised the man who lived in fear of fornication to marry, regardless of the risk of financial burdens or distraction from God. However, in situations where the man did not fear fornication, the merit of having children by itself should not necessarily lead him to choose marriage if there was a risk that he might encounter financial burdens or be distracted from God.¹⁵³

¹⁵²ibid.

¹⁵³ibid., p.34 ff.

CHAPTER THREE:MARRIAGE AND DIVORCE IN ISLAMIC LAW¹

In the second and third chapter of the *Kitāb ādāb al-nikāḥ*, Ghazali discussed, among other things, the most important legal aspects of marriage (*nikāḥ*²) such as the marriage contract (*ʿaqd*), the legal eligibility of the spouses and the laws of divorce. The Islamic literature on the laws of marriage and divorce is vast. In comparison to some of the lengthier works³, Ghazali's treatment of the subject is very brief, dealing only with the essentials of the legal procedure. Using Ghazali's summary of the laws of marriage and divorce as a starting point, the following chapter will repeat what he said, explain it, and put it in the context of other legal opinions on the issue. Ghazali wrote as a Shafi'i jurist. Even though the laws of marriage and divorce are essentially the same for all schools of Islamic law⁴, there are differences on certain points which are important for a more complete picture.

¹This chapter is based on the following texts in Arabic or in translation:

Hanbali law: Abdallah Ibn Ahmad Ibn Qudama al-Maqdisi, *Al-Muḡnī ʿalā šarḥ muḵtaṣar al-Ḳiraqī*, 9 vols. (3rd ed., Cairo, 1947-8), vol.6 and 7; *Al-ʿUmda*, transl. into French by Henri Laoust, *Le Précis de droit d'Ibn Qudama*, (Beyrouth, 1950).

Hanafi law: 'Ali Ibn Abi Bakr al-Marghinani, *Al-Hidāya šarḥ bidāyat al-mubtadī*, 4 vols. in 1 (Cairo, 1936), transl. by Charles Hamilton, *The Hedaya*, (2nd ed., London, 1870); Shams al-A'imma Abu Bakr Muhammad al-Sarakhsi, *Kitāb al-Mabsūṭ*, 30 vols. in 15 (Cairo, 1906-13); 'Ala al-Din Ibn Mas'ud al-Kasani, *Kitāb badā'i' al-šanā'i' fī tartīb al-šarā'i'*, 7 vols. (Cairo, 1909-10).

Maliki law: Muhammad bn Ahmad Ibn Rushd, *Bidāyat al-mujtahid*, 2 vols. in 1 (Cairo, 1920); Khalil Ibn Ishaq al-Jundi, *Al-Muḵtaṣar fī al-fiqh ʿalā maḍhab al-Imām Mālik* (Paris 1900) ; transl. into French by M.Perron, *Précis de Jurisprudence Musulmane* (Paris, 1849); Muhammad bn Muhammad al-Hattab, *Mawāhib al-jalīl li šarḥ muḵtaṣar Ḳalīl*, 6 vols. (Cairo, 1328-9); Ahmad bn Muhammad Abu al-Barakat al-Dardir, *Al-Šarḥ al-kabīr ʿalā muḵtaṣar Ḳalīl* (printed on margin of Dasuqi's *Hāšiyat*), Muhammad Ibn 'Arafa al-Dasuqi, *Hāšiyat al-Dasūqī ʿalā al-šarḥ al-kabīr*, 4 vols. (Cairo, 1911); Ibn Abi Zaid al-Qairawani, *Al-Risāla*, Arabic text and French transl. by L.Bercher (Algiers, 1945).

Shafi'i law: Abu Hamid Muhammad al-Ghazali, *Al-Wajīz fī fiqh al-Imām al-Šāfi'i*, 2 vols. in 1 (Cairo, 1899); Muhammad Ibn Idris al-Shafi'i, *Kitāb al-ʿUmm*, 7 vols. in 4 (Cairo, 1903-8).

Imamiyyah law: Abu Talib Muhammad bn al-Hasan bn Yusuf bn al-Muttahar al-Hilli, *Idāḥ al-fawā'id* (Mu'assasa Isma'iliyan, 1969-70); Muhammad Ibn Jamal al-Din Makki al-'Amali, *Al-Lum'a al-dimašqiyya* (2nd ed., Qom, Iran, A.H.1412).

² "properly, sexual intercourse, but already in the *Qur'ān* [*nikāḥ* is] used exclusively of the contract of marriage." J.Schacht, "nikah", *Encyclopedia of Islam*, 2nd ed. (Leiden: E.J.Brill), vol.3, p.26-35.

³see, for example, Ibn Qudama, *Al-Muḡnī*, Abu Talib Muhammad bn al-Hasan bn Yusuf bn al-Muttahar al-Hilli, *Idāḥ al-fawā'id*.

⁴one major point of difference is found between the Sunni and the Shi'i laws on marriage. Shi'i law permits *mut'a*, or temporary, marriage. Sunni law, however, prohibits the inclusion of a time limit in the marriage contract.

Ghazali began: "To be considered binding and legal (*yafīda al-ḥall*), the marriage contract (*ʿaqd*) must contain four basic elements (*arkān wa šurūṭ*):

- i. The permission of the woman's guardian (*walīy*). If such a person does not exist, then the permission of the ruler (*sultān*).
- ii. Consent of the woman if she is not a virgin (*ṭayyib*) and an adult (*bāliḡa*) [and mentally competent (*ʿāqil*)]⁵, or if she is an adult virgin, but is given in marriage by someone other than her father or grandfather.
- iii. The presence of two witnesses of established integrity of character (*ʿadāla*)⁶. Even if their inner qualities are not known (*mastūr*), we consider the contract valid in the case of necessity.
- iv. An offer and an immediate acceptance (*ījāb wa qubūl muttaṣal bihi*) by the groom, using the words "marriage" (*inkāḥ*) or "to give in marriage" (*tazwīj*), or their equivalent in any language. Both contracting agents have to be male and legally capable (*mukallaf*), whether they are the groom and the woman's guardian or their legal representatives."⁷

THE BASIC ELEMENTS OF A VALID MARRIAGE (ARKĀN)⁸

The marriage contract (*ʿaqd*)

All schools of Islamic law⁹ define marriage (*nikāḥ*) as a contract (*ʿaqd*). In legal terms, it belongs to the category of "contract of reciprocal benefit" (*muʿāwada*), a

⁵ addition in Murtada al-Zabidi (*Ithāf al-sāda al-muttaqīn bi šarḥ Iḥyāʾ ʿulūm al-dīn* (10 vols., reprint, Dar Ihya' al-Turath al-'Arabi, Beirut, 1970's ?), vol.5, p.324), which does not appear in the Beirut edition (*Iḥyāʾ ʿulūm al-dīn*, 5 vols. (Beirut, Dar al-Ma'rifa, nd.), vol.2, p.36), the text printed on the margin of Murtada al-Zabidi's text, or in the manuscript of the *Iḥyāʾ ʿulūm al-dīn* in The Chester Beatty Library (manuscript of the second quarter of the *Iḥyāʾ ʿulūm al-dīn* from 1149 (The Chester Beatty Library, No.3353)).

⁶ *ʿadāla* (lit. justice, integrity), or its adjective, *ʿādil*, is a term used to describe character traits that stand in contrast to *fāsiq* (sinful, wanton).

⁷ Ghazali, *Iḥyāʾ*, vol. 2, p.36.

⁸ singular *rukṇ*: basic element for the formation of the contract; as opposed to *aḥkām* (sgl. *ḥukm*), the legal effects of marriage (Y.Linant de Bellefonds, *Traité de droit musulman comparé*, 2 vols. (Paris, 1965) vol.2, p.193).

⁹ Sunni (Maliki, Hanafi, Hanbali and Shafi'i) and Shi'i (Imamiyyah). [There is, in fact, as much disagreement on some legal aspects of marriage (eg. the *walīy*) among Shi'i as among Sunni *ʿulamāʾ*. However, the aim of this chapter is to outline the main legal features of an Islamic marriage, and to describe the range of rules elaborated by the different scholars on certain issues. The aim is not to list the legal doctrine of each and every school of Islamic law. If, therefore, the rule given by Shi'i scholars resembles one of the Sunni schools, it is not mentioned separately.]

subdivision of "contracts of transfer of rights" (*tamlīkāt*)¹⁰. Essentially, the marriage contract legalizes the agreement between a man and a woman that in return for the payment of a dowry (*mahr*), and the obligation to provide for the woman's maintenance and the financial needs of the household, the husband gains the right to exclusive sexual enjoyment of the woman at all times, as well as her general obedience.¹¹ The obligations assumed with the contract become legally binding for both spouses. Failure to meet one's obligation is considered a reason for dissolution of the marriage.

To be valid, marriage must be contracted following a set procedure. The marriage contract follows the general model of contracts in Islamic law, whereby an offer (*ījāb*) made by one contracting party is followed by acceptance (*qubūl*) by the other. According to Hanafi, Maliki, Shafi'i and Imamiyyah law, the offer of marriage can be made either by the man or by the woman, or her legal representative. Thus, for example, the man can say: "I have married myself to your daughter (*tazawwajtu ibnatak*)", and the woman's *walīy* can reply: "I have given (her) to you in marriage (*zawwajtukaha*).". Hanbali law considers this order unacceptable, demanding that the offer of marriage has to be made by the woman, her guardian (*walīy*) or his legal representative (*wakīl*) and that it must precede the man's, or his legal representative's, acceptance.¹² Both offer and acceptance must take place during the same meeting convened for the sake of contracting the marriage (*majlis*)¹³. Another important condition for the validity of the contract is the wording of "offer" and "acceptance". All parties to the contract must be fully aware that they are dealing with marriage. Ghazali described this condition in the most general terms (see iv. above). But while "all schools agree that a marriage contract is valid when recited by the bride or her deputy by employing the words *ankaḥtu* or *zawwajtu* (both meaning I gave in marriage)

¹⁰ Y.Bellefonds, *Traité*, vol.2, p.23-28.

¹¹ J.Schacht, "nikah", *Encyclopedia of Islam*, 2nd ed.(Leiden: E.J.Brill); Shahla Haeri, *Law of Desire*, (Syracuse, 1989), Part One: Law As Imposed, pp.21-48.

¹² Bellefonds, *Traite*, vol.2, p.45; Ibn Qudama, *Al-Muḡnī*, vol.6, p.534; Hilli, *Idāḥ*, vol.3, p.13; Kasani, *Badā'i' al-ṣanā'i'*, vol.2, p.232.

¹³ Bellefonds, *Traité*, vol.2, p.43; Ibn Qudama, *Al-Muḡnī*, vol.6, p.535; Hilli, *Idāḥ*, vol.3, p.14; Kasani, *Badā'i' al-ṣanā'i'*, vol.2, p.232; Ibn Rushd, *Bidāyat*, vol.2, p.7; Ghazali, *Iḥyā'*, vol.2, p.36.

and accepted by the groom or his deputy with the words *qabiltu* (I have accepted) or *radītu* (I have agreed), [they] differ regarding the validity of the contract when not recited in the past tense or [] by using words other than those derived from the roots *al-zawāj* and *al-nikāḥ*, such as *al-hibah* (present) and *al-bayʿ* (sale)."¹⁴ The schools of law further disagree over the validity of reciting the contract in a language other than Arabic when the two contracting parties are able to use Arabic¹⁵. All agree, however, that the recital can be in another language if it is impossible to use Arabic.¹⁶ In this case, the meaning of the words used in the other language must be the same as those used in Arabic.

Guardianship (*wilāya*)

In Islamic law, a man can choose his marital partner and contract his own marriage unless he is a minor or mentally deranged. In these two cases, in order to marry, he needs a guardian (*waliy*)¹⁷. In comparison, a woman's degree of choice and autonomy regarding her own marriage is more limited and influenced by both her legal status and the legal school applied in her case.

A woman's legal status is determined by three factors: her physical maturity, her mental state and, unlike men, by her physical condition. Until she reaches puberty, a girl is considered a minor (*saḡīra*). Physical maturity - all schools agree that this is determined by menstruation and/or pregnancy¹⁸ - mark the beginning of female adulthood (*bulūḡ*). Mentally, a person is either considered competent (*ʿāqil*) or incompetent (*majnūn*)¹⁹. In the latter case, the person remains legally a

¹⁴A.M.Jawad Mughniyyah, *Marriage according to five schools of Islamic fiqh* Part 1 (*al-Tawhid*, Sept.-Nov.'86, vol.iv, no.1, pp.49-73) p.49.; Ibn Qudama, *ʿAl-Muḡnī*, vol.6, p.533; Ibn Rushd, *Bidāyat*, vol.2, p.4; Kasani, *Badāʾiʿ al-ṣanāʾiʿ*, vol.2, p.229-232; Ghazali, *ʿAl-Wajīz*, vol.2,p.3; Hilli, *Idāḥ*, vol.3, p.12-15.

¹⁵Ibn Qudama, *ʿAl-Muḡnī*, vol.6, p.533; Hilli, *Idāḥ*, vol.3, p.12-15.

¹⁶A.M.Jawad Mughniyyah, *Marriage*, Part 1; p.50; Ibn Qudama, *ʿAl-Muḡnī*, vol.6, p.534; Hilli, *Idāḥ*, vol.3, p.14; Ghazali, *ʿAl-Wajīz*, vol.2, p.3.

¹⁷ If this guardian is the father or the grandfather, he can force his ward into marriage (*waliy mujbir*): Bellefonds, *Traité*, vol.2, p.48. "Guardianship with the right of compulsion (*wilāyat al-ijbār*) is exercised over a person of no or limited legal capacity wherein the guardian may conclude a marriage contract that is valid and takes effect without the consent or acceptance of the ward" (Jamal J. Nasir, *The Status of Women under Islamic Law* (Graham & Trotman, 1990), p.9).

¹⁸Mughniyyah, *Marriage* Part 1, p. 54; The schools differ on the maximum age at which a girl is considered an adult regardless of her physical maturity - from 9 years (Imamiyyah) to 17 years (Hanafi and Maliki).

¹⁹Y.Linant de Bellefonds makes a distinction between *majnūn* ("fou violent") and *maʿtūh* ("fou calme"), but points out that there is no difference in legal treatment. (Y.Bellefonds, *Traité*, vol.2, p.66).

minor. Concerning a woman's physical condition, the jurists distinguish between a virgin (*bikr*) and a woman who has had sexual intercourse (*ṭayyib*).²⁰

The five schools of Islamic law differ significantly on the degree of choice and autonomy granted to a woman with respect to marriage. The Malikis, the Hanbalis and the Shafi'is do not permit a mentally competent woman to contract her own marriage at any point in her life, demanding that she have both the permission and be represented at the contracting of the marriage by her guardian (*walīy*)²¹. He, however, can not give her in marriage without her consent if she is an adult and a *ṭayyib*. If, however, she is a virgin, her consent²² is only needed if she is married by someone other than her father or grandfather (*walīy mujbir*). In other words, all three schools grant the father (or grandfather) the right to force his adult and mentally competent, but virgin, ward into marriage.²³ On the other hand, according to Shafi'i law and one opinion in Hanbali law, the *walīy mujbir* loses the right to force his mentally competent minor ward into marriage once she has had sexual intercourse.²⁴

The Hanafi jurists differ. They grant a mentally competent adult woman the right to choose her husband and contract marriage, regardless of whether she is a virgin or not.²⁵ If, however, she marries a man not her equal (*kafā'a*²⁶), or someone who can not pay her an adequate dower (*mahr al-miṭl*), her *walīy* has the right to demand annulment of the marriage.²⁷ In further contrast, most jurists belonging to the

²⁰ in marriage and/or illegal sexual intercourse (*zinan*) (Y.Bellefonds, *Traité*, vol.2, p.64).

²¹ Y.Bellefonds, *Traité*, vol.2, p.49; Ibn Rushd, *Bidāyat*, vol.2, p.7-8; Ibn Qudama, *Al-Muḡnī*, vol.6, p.449; Ghazali, *Al-Wajīz*, vol.2, p.5.

²² There is consensus among the schools that a woman who has had sexual relations (*ṭayyib*) must voice her consent in marriage, while in case of a virgin, silence is considered a sign of consent (unless, in Shafi'i law, her *walīy* is someone other than her father). It is assumed that a virgin is too shy to verbalize her acceptance of marriage. Ibn Qudama, *Al-Muḡnī*, vol.6, p. 493; Ibn Rushd, *Bidāya*, vol.2, p. 3-4.

²³ Y.Bellefonds, *Traité*, vol.2, p.61; Ibn Qudama, *Al-Muḡnī*, vol.6, p.487; Ibn Rushd, *Bidāya*, vol.2, p. 5; according to one opinion in Maliki law, the right to forgo the adult virgin's consent ends upon her reaching a certain age: Ibn Rushd, *Bidāya*, vol.2, p.4-5.

²⁴ Mughniyya, *Marriage according to five schools of Islamic fiqh* - Part 2, (*al-Tawhid*, July-Sept. '87, vol.iv, no.4, pp.34-48), p.35; Ghazali, *Al-Wajīz*, vol.2, p.5; Ibn Qudama, *Al-Muḡnī*, vol.6, p.492.

²⁵ But even the Hanafis recommend that the woman authorize her guardian to contract the marriage on her behalf: Y.Bellefonds, *Traité*, vol.2, p.80; Marghinani, *The Hedaya*, p.34.

²⁶ According to the rule of *kafā'a*, a woman should only be married to a man who is at least her equal, if not her superior, in social terms. Disregard for this rule can be a reason for dissolving the marriage. Six criteria can be relevant in determining a man's social position- family (*nasab*), religion (Islam), profession (his own compared to the woman's father's), good character, wealth and freedom (as opposed to slave status). Again, the schools differ in applying these criteria. (J.L.Esposito, *Women in Muslim family law*, (Syracuse 1982), p.22; Mughniyya, *Marriage* Part 2, p.38-39, Y.Bellefonds, *Traité*, vol.2, pp.171-181).

²⁷ Marghinani, *The Hedaya*, p.34.

Imamiyyah school put no restrictions at all on a mentally competent adult woman with regard to marriage. She can choose her own partner and contract the marriage without anyone else's permission, and no one can object later.²⁸

All schools agree that the father of a woman who is a minor virgin, or mentally incompetent, can contract marriage on her behalf without her consent (*walīy mujbir*)²⁹. The Malikis and Hanbalis limit the right of *wilāyat al-ijbār* to the father.³⁰ He can, however, specifically authorize the executioner of his will (*waṣīy*) to give his daughter in marriage.³¹ The Imamiyyah and the Shafi'is extend the right of *wilāyat al-ijbār* to the girl's grandfather.³² The Hanafis, however, make no distinction between *walīy* and *walīy mujbir*. Whoever functions as the guardian of a minor or mentally incompetent woman can force her into marriage. However, while according to all other schools, a marriage contracted by a *walīy mujbir* is irrevocable, Hanafi law grants a girl, mentally competent or not, the right to demand annulment of a marriage contracted by someone other than her father or grandfather once she attains puberty (*kīyār al-bulūḡ*).³³

The schools agree that marriage guardians in general should be chosen from among the agnates (*ʿaṣaba*)³⁴. In the case of unsuitability or death of the nearest agnate, guardianship passes on to the next in line. But the schools disagree significantly over who is given preference with respect to guardianship.

In Hanafi law, the order of guardianship follows the order of inheritance. Therefore, once he reaches adulthood, the woman's son - and after him his son - replace her father as her guardian. This rule, however, is somewhat theoretical, for this

²⁸Mughniyya, *Marriage* Part 2, p.34-35; Hilli, *Idāh*, vol.3, p.14.

²⁹Mughniyyah, *Marriage* Part 2, p.35.

³⁰Ibn Rushd, *Bidāya*, vol.2, p.6; Ibn Qudama, *Al-Muḡnī*, vol.6, p.464.

³¹Y.Bellefonds, *Traité*, vol.2, p.61; Ibn Rushd, *Bidāya*, vol.2, p.4, p.6, p.11; Ibn Qudama, *Al-Muḡnī*, vol.6, p.464, p.489; in Maliki law, this is on the condition that the husband has been designated by the father.

³²Mughniyya, *Marriage* Part 2, p.36; Hilli, *Idāh*, vol.3, p.16, p.25; Ghazali, *Al-Wajīz*, vol.2, p.5.

³³Y.Bellefonds, *Traité*, vol.2, p. 61-62; J.L.Esposito, *Family Law*, p.17; Marghinani, *The Hedaya*, p.36-37; Ibn Qudama, *Al-Muḡnī*, vol.6, p.489.

³⁴"(male)person whose relation to the ward can be traced without the intervention of female links": a)the descendants, ie. son, son's son, and so on, b) the ascendants, ie. father, paternal grandfather, c) the full brothers, the agnatic (half-)brothers and all their male descendants and, d) the agnatic uncles and their sons.(J.J.Nasir, *The status of women under Islamic law*, p.10). Not the nearest relative, but the owner contracts the marriage of a slave woman. (Ibn Qudama, *Al-Muḡnī*, vol.6, p.456).

school allows the mentally competent adult woman to contract her own marriage. Only the mentally incompetent adult is given in marriage by her guardian. Nevertheless, even the guardian of a mentally competent adult woman holds some degree of influence, for he can have the marriage of his ward dissolved if the match is unequal.³⁵ The Shafi'i and the Hanbali schools have ruled that the father, and after him, his father, has the first right to act as marriage guardian for his daughter (according to one view attributed to Ibn Hanbal, the son, not the grandfather, follows the woman's father in the order of guardianship). The Shafi'i school completely excludes the son from the order of guardianship.³⁶ Two opinions are reported from Malik; according to one version, the son precedes the father, according to the second view, the father precedes the son in the order of guardianship.³⁷ In Hanbali and Shafi'i law, anyone who qualifies as a marriage guardian can appoint a legatee (*waṣīy*) who, after his death, contracts the marriage on his behalf. The Imamiyyah restricts guardianship to the father and the paternal grandfather.³⁸

In certain cases, the governor (*ḥakīm*)³⁹ is called upon to act as *walīy*. All Sunni schools agree, for example, that the governor should generally act as *walīy* for a woman for whom no *walīy* can be found among her (eligible) relatives.⁴⁰ According to Imamiyyah law, the governor can only contract marriage on behalf of a mentally deranged adult (*bāliḡ*), male or female, not on behalf of a minor or discerning (*raṣīd*) person, and only if they have neither father nor grandfather.⁴¹ An exception to the rule of majority (*bulūḡ*) is the mentally incompetent girl (*al-majnūna al-saḡīra*), for whom the governor can contract marriage if it is in her interest (*maṣlaḥa*).⁴² Finally, Maliki, Shafi'i and Hanbali law gives the woman the opportunity to resort to the ruler

³⁵ Marghinani, *The Hedaya*, p.34-37; Mughniyya, *Marriage* Part 2, p.38; Y.Bellefonds, *Traité*, vol.2, p.54.

³⁶ Ibn Qudama, *Al-Muḡnī*, vol.6, p.456-7; Ghazali, *Al-Wajīz*, vol.2, p.6; Ibn Rushd, *Bidāya*, vol.2, p.11-12.

³⁷ Ibn Rushd, *Bidāya*, vol.2, p.11-12.

³⁸ Hilli, *Idāḥ*, vol.3, p.16.

³⁹ Ghazali refers to him as the Sultan; in modern terms he would be the "head of state and his delegate, notably the judge" (J.J.Nasir, *Status of Women*, p.10) for further discussion of the function of the *ḥakīm* see Mughniyyah, *Marriage* Part 2, p.36-8.

⁴⁰ Ibn Rushd, *Bidāya*, vol.2, p.12; Ibn Qudama, *Al-Muḡnī*, vol.6, p.460; Ghazali, *Al-Wajīz*, vol.2, p.5; Marghinani, *The Hedaya*, p.34.

⁴¹ Hilli, *Idāḥ*, vol.3, p.17; Shafi'i law also restricts representation by a *ḥakīm* to the adult woman.

⁴² Hilli, *Idāḥ*, vol.3, p.18.

should her *walīy* refuse to marry her without a good reason. The ruler can then order the *walīy* to comply with the woman's wishes, or, should he continue to refuse, himself act as the woman's guardian.⁴³

Ghazali makes no specific mention of this point, but in order to act as *walīy*, a person must meet certain criteria. According to Ibn Qudama⁴⁴, six criteria have to various degrees been applied by the four Sunni schools: sanity (*ʿaql*), freedom (*ḥurriyya*)⁴⁵, Islam, maleness (*ḍukūriyya*), adulthood (*bulūḡ*) and integrity of character (*ʿadāla*). All jurists agree that the *walīy* must be a male⁴⁶ Muslim. They further agree that he must be a free person. Most jurists also demand that the *walīy* be an adult. All jurists recommend taking into consideration the *walīy*'s sanity. Whether he must also be a just person (*ʿādil*) or not is contested.⁴⁷

It remains to be mentioned that any person capable of contracting marriage - for him- or herself, or as *walīy* - can appoint a representative (*wakīl*) to act on their behalf.⁴⁸

The Witnesses:

An Islamic marriage is basically a verbal agreement. Following the procedure outlined above, one party pronounces an offer of marriage, which is accepted by the other. The contract itself requires no additional formalities, such as, for example, the intervention of a representative of the secular or religious authorities. Nor does this oral contract have to be recorded in the form of a document.⁴⁹ In order, therefore, to provide proof

⁴³Y.Bellefonds, *Traité*, vol.2, pp.56-7; Th.W.Juynboll, *Handbuch des Islamischen Gesetzes* (Brill, 1910), p.211; Ibn Rushd, *Bidāya*, vol.2, pp.13-14; Ibn Qudama, *Al-Muḡnī*, vol.6, p.460; Shafi'i, *Al-Umm*, vol.5, p.11.

⁴⁴Ibn Qudama, *Al-Muḡnī*, vol.6, p.464 ff ; also see Mughniyyah, *Marriage* Part 2, p.38.

⁴⁵as opposed to slave status.

⁴⁶in Hanafi law, a woman can sometimes be in the position to act as *walīy*. If no *walīy* can be found among the agnates, the right to act as *walīy*, following the order of inheritance, passes on to the cognates (*ḍawū 'l-arḥām*), a category including women (Sarakhsi, *Mabsūṭ*, vol.6, p.223). Y.Bellefonds, *Traité*, vol.2, p.55, p.62; a general exception is the right of the female slave owner to act as *walīy* for her slave.

⁴⁷Shi'i law does not mention specific criteria which determine the guardian's eligibility. In Shi'i law, the father or the paternal grandfather act as guardian - by implication, these are adult men. In addition, "a woman can be a marriage guardian if she is master of a slave (*maula*) or a legatee (*waṣīy*) to whom the original guardian (father or paternal grandfather) has willed". (Husein Modarressi, in his letter dated 15th September 1993).

⁴⁸Otto Spies, "Wakala", *Encyclopedia of Islam*, 1st ed.(Leiden:E.J. Brill, 1934), vol.4, pp.1094-5; Y.Bellefonds, *Traité*, vol.2, p.57.

⁴⁹which, however, it frequently is.(Y.Bellefonds, *Traité*, vol. 2, pp.39-40).

of the existence of a marriage contract between the two parties, all four Sunni schools require that the marriage be validated through the presence of two witnesses, either when it is contracted or when it is consummated.⁵⁰ The Imamiyyah school, however, only recommends (*mustahabb*) the presence of two witnesses, but does not make it an essential element of the contract.⁵¹

Like the *walīy*, witnesses are chosen with certain criteria in mind, such as their gender, religion, sanity, adulthood, freedom, ability to hear and integrity (*ʿadāla*). But again, the schools differ on the degree to which these criteria are applied. One noticeable difference concerns the witnesses' gender. The Hanafi school stands alone in allowing two women and one man to act as witnesses to a marriage contract, the three others demanding that all witnesses be male.⁵² Also, the Shafi'i school alone demands integrity of character (*ʿadāla*).⁵³ However, this merely implies that the person must not be openly and evidently dissolute (*fāsiq*); it is not necessary to investigate his character in great detail (as Ghazali expressed it: "Even if their inner qualities are not known (*mastūr*), we consider the contract valid[]".⁵⁴).

MANNERS OF MARRIAGE (*ĀDĀB AL-NIKĀḤ*)

Following the basic legal elements of the marriage contract, Ghazali listed a number of additional elements, which, while not affecting the validity of the contract, were considered customary and proper (*ādāb al-ʿaqd*). He said: "A proposal of marriage (*khitba*) should be made to the woman's guardian. However, this should not be done while the woman is observing a legal waiting period (*ʿidda* ⁵⁵), but only after this

⁵⁰The Hanafis (Marghinani, *The Hedaya*, p.26), Hanbalis (Ibn Qudama, *Al-Muḡnī*, vol.6, p.450) and Shafi'i's (Ghazal, *Al-Wajīz*, vol.2, p.4) demand the presence of witnesses at the time of marriage contract. The Malikis (al-Qayrawani, *Risala*, transl. L.Bercher, p.172-3; Ibn Rushd, *Bidāya*, vol.2, p.15) also permit witnessing of the marriage to take place at the time when the marriage is consummated.

⁵¹Hilli, *Idāḥ*, vol.3, p.14.

⁵²Marghinani, *The Hedaya*, p.26; however, even in Hanafi law, at least one of the witnesses must be male; Hattab, *Mawāhib*, vol.3, p.444; Ibn Qudama, *Al-Muḡnī*, vol.6, p.452.

⁵³Ghazali, *Al-Wajīz*, vol.2, p.5.

⁵⁴Ghazali, *Iḥyāʾ*, vol.2, p.36.

⁵⁵the prescribed period of sexual abstinence for a woman starting immediately after the termination of her marriage through death of her husband, divorce or annulment of the marriage. During this period, which, depending on the nature of the marriage and its termination, can last from one menstrual period (for slave concubines) to up to four months and ten days (in the case of widowhood), the woman cannot remarry. The aim of the *ʿidda* is to establish whether children have resulted from the marital union.

period has expired. Nor should one propose marriage to a woman who is engaged to someone else, because 'a proposal upon a proposal' (*kitba 'alā kitba*) is prohibited."⁵⁶

Ghazali recommended to introduce the marriage proposal (*kitba*) with praise to God (*taḥmīd*). He also recommended to begin the marriage ceremony (*nikāḥ*) with a religious address (*kuṭba*), and again, to praise God during the offer and acceptance (*ījāb wa qubūl*). The woman's *walīy* should say: "Praise be to God and blessings upon the Messenger of God, I give to you in marriage my daughter so and so". And the groom should respond: "Praise be to God and blessings upon the Messenger of God, I have accepted her in marriage for this brideprice (*ṣadāq*)"⁵⁷.⁵⁸ Ghazali pointed out that this brideprice should be fixed, and small.

Ghazali considered it important for both bride and groom to know about each other before the contracting of the marriage. The bride, he said, should be told about the groom, and he should be given a chance to see her, allowing both to make an informed choice. Ghazali believed this to be the basis for affection and intimacy between the couple.⁵⁹

A man should marry with the right intentions, and not merely in the pursuit of physical pleasure and enjoyment. Among "right intentions", Ghazali counted the wish to follow the example of the Prophet (*sunna*), the desire to protect oneself from sin⁶⁰ and to have children, and to benefit from all the other merits of marriage previously mentioned. "However", Ghazali pointed out, "the pursuit of pleasure is not incompatible with right intentions, for it happens that duty brings pleasure. Umar bn Abd al-Aziz⁶¹ said: 'When duty brings pleasure, it is like Nirsiyan dates with butter'."⁶²

* see pp. 38 ff The Islamic Argument in Favor of Marriage and Celibacy
 see p. 47 ff Ghazali's & Makkī's Arguments in Favor of Marriage and Celibacy

⁵⁶Ghazali, *Iḥyāʾ*, vol.2, p.36.

⁵⁷synonymous to *mahr*.

⁵⁸Ghazali, *Iḥyāʾ*, vol.2, p.36.

⁵⁹ibid.

⁶⁰lit.: from looking at what is forbidden (*ḡaḍḍ al-baṣar*).

⁶¹the Umayyad Caliph, died 720/ A.H.101.K.V.Zettersteen, "Omar b. 'Abd al-'Aziz", *Encyclopædia of Islam*, 1st ed. (Leiden:E.J.Brill, 1936), vol.III, pp.977-9.

⁶²Ghazali, *Iḥyāʾ*, vol.2, p.36.

Finally, guests should be invited in addition to the two witnesses required for the validity of the contract, and the marriage should be contracted in the mosque and during the month of *Šawwāl* ⁶³. A'isha is reported to have said: " The Prophet married me in the month of *Šawwāl*, and he consummated the marriage in *Šawwāl*." ⁶⁴

MARRIAGE IMPEDIMENTS (*MAWĀNI^c AL-NIKĀḤ*)

A Muslim man can only validly contract marriage to a woman who does not belong to one of several prohibited categories. The law discusses these categories in relation to women, speaking of *muḥarramāt*, "women who are forbidden in marriage".

Impediments can result from consanguinity (*nasab*), affinity (marital relationship, *muṣāhara*), foster relationship (*riḍā^c*), religious affiliation, marital status, slave status, et. al., and can be either temporary or permanent. Ghazali mentioned the following:

Permanent impediments:

Consanguinity (*nasab*)

Based on a Quranic verse⁶⁵, all schools prohibit marriage between a man and a female related⁶⁶ to him "by being one of his ascendants (*uṣūlihi*) or descendants (*min fuṣūlihi*), or one of the descendants of his immediate ascendants (*fuṣūl awwal uṣūlihi*), or ^{the first} ~~one~~ of the direct descendants of any other ancestor (*min awwal faṣl min kull aṣl [ba^cdahu aṣl]* ⁶⁷). By his ascendants," Ghazali said, "I mean mothers and grandmothers, and by his descendants children and grandchildren, and by the descendants of his immediate ascendants his siblings and their children, and by the

⁶³the tenth month of the Muslim year.

⁶⁴Ghazali, *Iḥyā²*, vol.2, p.36.

⁶⁵M.Pickthall, *The Glorious Koran*, Sura 4, Verse 23:"Forbidden unto you are your mothers, and your daughters, and your sisters, and your father's sisters, and your mother's sisters, and your brother's daughters and your sister's daughters..."

⁶⁶as relatives are considered the offspring of marriage, concubinage, and, according to some schools, illegal intercourse (*zinan*).

⁶⁷in the Beirut edition of the text (*Iḥyā² ʿulūm al-dīn*, 5 vols. (Beirut, Dar al-Ma'rifa, nd.) vol.2, p.37), in the text printed on the margin of Murtada al-Zabidi, and in the manuscript held in the Chester Beatty library (manuscript of the second quarter of the *Iḥyā² ʿulūm al-dīn* from 543/1149 (The Chester Beatty Library, No.3353)). Not in Murtada al-Zabidi's text.(*Ithāf al-sāda al-muttaqīn bi šarḥ Iḥyā² ʿulūm al-dīn* (10 vols., reprint, Dar Ihya' al-Turath al-'Arabi, Beirut, 1970's ?)vol.5, p.335).

direct descendants of any other ascendants the paternal and maternal aunts, but not their children."⁶⁸

Affinity (*muṣāhara*)

Marriage is also prohibited between a man and a woman who is related to him by marriage (*muṣāhara*)⁶⁹. Affinity is established permanently, and does not end in case of termination of the marriage which caused it in the first place. The prohibition resulting from affinity applies to four categories of women: 1. women who have been married to one of his ascendants (his father, grandfather etc.) on the maternal or paternal side, 2. women who have been married to one of his descendants (his son, grandson etc.), 3. his wife's ascendants (mother, grandmother) on the maternal or paternal side, 4. and his wife's descendants from another marriage⁷⁰.

Foster relationship (*riḍāʿ*)

All schools agree that nursing creates the same kinds of permanent marriage prohibitions as does consanguinity.⁷¹ The woman nursing the child is legally considered his (foster)-mother, her children his (foster)-siblings, her husband his (foster)-father etc.. Consequently, marriage to her, as well as her relatives in the prohibited degree outlined above, becomes unlawful (*ḥarām*). There is, however, disagreement among the jurists over the number of breast-feedings that must have taken place to create the prohibition.⁷²

⁶⁸Ghazali, *Iḥyāʿ*, vol.2, p.37; note that cousins, including direct cousins, are exempt from the prohibition. (Y.Bellefonds, *Traité*, vol.2, p.107: "On notera que le mariage entre cousins, même germain, n'est pas prohibé, pas même réprouvé.")

⁶⁹affinity is established in one of two ways: a)through the conclusion of a valid marriage contract, with or without consummation; b)through sexual contact as a result of a "mistake of contract" (*ṣubḥat ʿaqd*), an expression used to describe sexual intercourse between a man and a woman under the false impression that they are legally married. If the mistake is discovered, the marriage is dissolved. (see Mughniyya, *Marriage according to five schools of Islamic fiqh* - Part 4, (*al-Tawhid*, Dec.'87-Feb.'88, vol.v, no.2, pp.79-96) p.4 ; Y.Bellefonds, *Traité*, vol.2, pp.153-5; J.Schacht, *An Introduction to Islamic Law* (Clarendon Press, Oxford, 1984), p.176.

⁷⁰However, the schools agree that marriage with his wife's daughter (the man's step-daughter) is not forbidden merely on the conclusion of the contract, but only if the man has established sexual relations with his wife (Mughniyya, *Marriage* Part 1, p.60).

⁷¹This rule is based on the notion that a woman's milk builds up the child's flesh, muscles and bones, and thus becomes part of his body in the same manner as blood. (see Y.Bellefonds, *Traité*, vol.2, p.115; Hilli, *Idāh*, vol.3, pp.46-7)

⁷²Hanafi (Sarakhsi, *Mabsūṭ*, vol.5, p.134) and Maliki (Ibn Rushd, *Bidāya*, vol.2, p.31) law considers even a drop of milk sufficient, Shafi'i (Murtada al-Zabidi, *Iṭḥāf al-sāda*, vol.5, p.335) and Hanbali (Ibn Qudama, *Précis*, p.179) law regards five breast-feedings as the necessary minimum, while the Imamiyyah demand that breast-feeding must have taken place long enough " to make flesh grow and to strengthen the bones", or one day and one night, or fifteen (or ten) times successively (Hilli, *Idāh*, vol.3, pp.46-7). (Mughniyya, *Marriage* Part 1, pp.69-70).

Sworn allegation of adultery (*li^cān*)

A man who accuses his wife of adultery, but has no legal proof to back up his claim⁷³, can make a sworn allegation of adultery (*li^cān*) against her. Following the procedure outlined in the Quran⁷⁴, the husband has to swear by God four times that he is accusing his wife in good faith, and has to invoke the curse of God on himself if he is lying. If the woman responds by swearing four times that her husband is wrong, and invoking the wrath of God on her if she is lying, the marriage is dissolved.⁷⁵ All schools agree that the couple must separate following *li^cān*, but disagree on whether the woman becomes permanently or temporarily prohibited to her husband. According to Shafi'i, Hanbali, Maliki and Imamiyyah law, and according to the Hanafi jurist Abu Yusuf, the woman becomes permanently prohibited (*ḥarām*) to her husband following *li^cān*.⁷⁶ According to Abu Hanifa, the marriage is renewable.⁷⁷

Temporary impediments:

These can result from the woman's religious affiliation, her marital status and from a number of miscellaneous causes.

Religious affiliation:

Islamic law prohibits marriage between a Muslim man and a non-Muslim woman who is neither a Christian nor a Jew.⁷⁸ The criterion for acceptance of these two religious

⁷³Islamic law only accepts claims of adultery or fornication supported by the testimony of four witnesses who were present during the act, in conformity with the Quranic verse : "As for those of your women who are guilty of lewdness, call to witness four of you against them. And if they testify (to the truth of the allegation....)." M.Pickthall, *The Glorious Koran*, Sura 4, Verse 15.

⁷⁴M.Pickthall, *The Glorious Koran*, Sura 24, Verse 6-9: "As for those who accuse their wives but have no witnesses except themselves; let the testimony of one of them be four testimonies, (swearing) by Allah that he is of those who speak the truth. And yet a fifth, invoking the curse of Allah on him if he is of those who lie. And it shall avert the punishment from her if she bear witness before Allah four times that the thing he said is indeed false. And a fifth (time) that the wrath of Allah be upon her if he speaketh truth."

⁷⁵except in Shafi'i law, where the man's accusation alone is sufficient to end the marriage. Ibn Rushd, *Bidāya*, vol.2, pp.104-5.

⁷⁶Amali, *Lum'a*, p.192; Hilli, *Idāh*, vol.3, p.451; Ibn Rushd, *Bidāya*, vol.2, p.105; Ibn Qudama, *Al-Muḡnī*, vol.7, pp.410-3; Ghazali, *Iḥyā'*, vol.2, p.37; Marghinani, *The Hedaya*, pp.124-5.

⁷⁷Marghinani, *The Hedaya*, pp.124-5.

⁷⁸Ghazali explained that this prohibition concerns women who belong to the Zoroastrian faith (*majūsīya*), idolatresses (*waṭanīya*), atheists (*zindīqa*) and the followers of libertinism (*maḍhab al-ibāḥa*) (*Iḥyā'*, vol.2, p.36). Shi'i law differs from Sunni law in permitting marriage to Zoroastrian women. (Hilli, *Idāh*, vol.3, p.97); According to Ibn Qudama, the majority of Sunni jurists prohibit marriage to Zoroastrian women (*Al-Muḡnī*, vol.6, p.591).

communities is the belief in revealed scriptures they share with Islam.⁷⁹ However, not all Christian and Jewish women qualify. Exempt is the woman "who [se family] only converted to Christianity or Judaism after the falsification (*tabdīl*) of their Holy Books⁸⁰ or after the arrival of the Prophet Muhammad, and, in addition to that, does not belong to the family of the Israelites. If both descriptions apply to her, marriage to her is prohibited. If, however, she only lacks Israelite descent, opinions differ."⁸¹

These obstacles are temporary since they can be overcome through the woman's conversion to Islam.

Marital Status:

Islamic law does not restrict the number of women a man can wed in the course of his life, but limits the number of wives he can have simultaneously to four.⁸² Thus a woman who would be his fifth (or sixth or seventh etc.) wife is prohibited (*ḥarām*) to him. He can only marry her once he has separated from one of his previous wives.

Ghazali explained that a man can immediately contract a new marriage if at least one of his four wives has been divorced irrevocably.⁸³ If, however, the divorce is revocable, he has to wait until the end of the woman's waiting period (*ʿidda*).⁸⁴

One of the conditions the law has placed on polygamous marriages is the avoidance of consanguinity between wives. The Quran prohibits marriage to two sisters at the same time.⁸⁵ Based on this rule, most Imamiyyah scholars have limited the prohibition of consanguinity in a polygamous marriage to two sisters.⁸⁶ The four Sunni schools,

⁷⁹Jews and Christians are referred to as *Ahl al-Kitāb*, People of the Book. The Quran says: ".and [so are] the virtuous women of those who received the Scripture before you (lawful for you)." M.Pickthall, *The Glorious Koran*, Sura 5, Verse 5.

⁸⁰the Torah, the Gospel and the Psalms (Murtada al-Zabidi, *Itḥāf al-sāda*, vol.5, p.333)

⁸¹Ghazali, *Iḥyāʾ*, vol.2, p.36; also see Hilli, *Idāḥ*, vol.3, pp.96-7.

⁸²M.Pickthall, *The Glorious Koran*, Sura 4, Verse 3: "....marry of the woman, who seem good to you, two or three or four;....". However, this limitation only applies to permanent marriage. Shi'i law allows a man to simultaneously contract temporary marriage (*nikāḥ al-mutʿa*) with as many women as he wishes (Haeri, *Law of Desire*, p.62; 'Amali, *Al-Lumʿa*, p.165).

⁸³Shafi'i (Ghazali, *Al-Wajīz*, vol.2, p.11), Maliki (Hattab, *Mawāhib*, vol.3, p.465) and Imami (Hilli, *Idāḥ*, vol.3, pp.92-3) law allows the man to marry a fifth wife immediately following the irrevocable divorce of one of his four wives. Hanafis (Marghinani, *The Hedaya*, p.32) and Hanbalis (Ibn Qudama, *Al-Muḡnī*, vol.6, p.543) demand that he wait for the end of her *ʿidda* (Y.Bellefonds, *Traité*, vol.2, p.136, p.369).

⁸⁴Ghazali, *Iḥyāʾ*, vol.2, p.37.

⁸⁵M.Pickthall, *The Glorious Koran*, Sura 4, Verse 23: "And (it is forbidden unto you) that ye should have two sisters together."

⁸⁶Mughniyya, *Marriage* Part 1, p.61; Hilli, *Idāḥ*, vol.3, p.81: Shi'i law permits simultaneous marriage to a woman and her niece (and her descendants) and to a woman and her aunt. However, in the first case, the second marriage (to the niece) is contingent on the first wife's (the aunt's) approval. In the second case, the second

however, have extended the rule by analogy and have generally prohibited taking as wives at the same time two women, who, if they were a man and a woman, would be too closely related to contract marriage.⁸⁷ However, other than the permanent prohibitions created by consanguinity and affinity, the prohibition of consanguinity between wives is temporary. A man can thus theoretically marry the sister (or aunt, or niece) of his divorced wife.⁸⁸

Similar to Muslim men, Muslim women are legally permitted to marry an infinite number of men in the course of their lives. However, in contrast to their brothers in faith, Muslim women are only allowed one husband at a time. One reason for this rule is the fact that Islamic law traces descent through the father. In order to determine paternity, women's sexual contact must be limited to one man during the time required to recognize pregnancy. Married women thus fall into the category of prohibited women (*muḥarramāt*).

Following the dissolution of their marriage, women observe a waiting period (*ʿidda*) during which they cannot contract a new marriage.⁸⁹ To marry during the *ʿidda* would defeat the purpose of this period of sexual abstinence, intended to establish whether a pregnancy has resulted from the previous marital union. All schools thus agree that marriage with a woman observing the *ʿidda* is prohibited. The length of the waiting period varies according to the woman's status, her condition, whether the marriage was consummated and the way it was dissolved.

The longest *ʿidda*, of four months and ten days, is prescribed for widows, regardless of whether the marriage was consummated or not. Women who are pregnant when their marriage ends, be it the result of death, divorce or juridical decree, wait until the delivery of their child. Only Shi'i law demands that a pregnant widow wait for the

wife (the aunt) should be given the option of annulling the marriage if she was not aware of the fact that her new husband was already married to her niece.

⁸⁷Most combinations, such as, for example, taking in marriage a woman and her daughter, are already ruled out by the prohibitions established by affinity. This prohibition adds the case of aunt and niece. ³⁶ If the aunt is to be male, marriage between them would be prohibited, since a man can not marry his niece.

⁸⁸Marghinani, *The Hedaya*, pp.29-30; Ibn Qudama, *Al-Muḡnī*, vol.6, pp.581-2; Hattab, *Mawāhib*, vol.3, p.465; al-Dasuqi, *Hāshiyat al-Dasūqī*, vol.2, pp.257-8; Ghazali, *Al-Wajīz*, vol.2, p.11.

⁸⁹Hilli, *Idāh*, vol.3, pp.335-36; Marghinani, *The Hedaya*, pp.128-132; Ibn Qudama, *Al-Muḡnī*, vol.7, p.448 ff.; Ibn Rushd, *Bidāya*, vol.2, pp.77-85; Ghazali, *Al-Wajīz*, vol.2, pp.93-102.

longer of the two periods, whether it be delivery of her child or the end of the *‘idda* of four months and ten days prescribed for widows. The *‘idda* of divorce or dissolution of the marriage through juridical decree is three menstrual cycles for women who menstruate, and three months for those who do not, (but are of an age where they should). If, however, the marriage was not consummated, no *‘idda* needs to be observed.⁹⁰

Irrevocable divorce (*ṭalāq bā’in*)

Islamic law grants the husband the unilateral right to divorce his wife. But divorce does not immediately and automatically end the marriage. Provided the husband has observed the divorce procedure prescribed by the *sunna* (*ṭalāq al-sunna*) and has only pronounced the divorce formula once (*ṭalāq raj‘ī*), he has the right to renew conjugal relations with his wife at any time during her waiting period (*‘idda*). If, however, he has disregarded the *sunna* and pronounced the divorce formula three times at once, the divorce becomes effective and irrevocable immediately (*ṭalāq bā’in*). The same is true if the husband divorces his wife for the third time, even if months or years have passed in between each divorce statement. Following an irrevocable divorce, the woman becomes unlawful (*ḥarām*) to her former husband. This prohibition, however, is temporary. It can be revoked if the woman marries another man, called a *muḥallil*, who subsequently divorces her. Provided that her interim marriage was consummated, the woman becomes, once again, permitted (*ḥalāl*) to her former husband. This rule is based on the Quran : "And if he hath divorced her (the third time), then she is not lawful unto him thereafter until she hath wedded another husband. Then if he (the other husband) divorce her it is no sin for both of them that they come together again."⁹¹

⁹⁰in accordance with the Quran: "If ye wed believing women and divorce them before ye have touched them, then there is no period that ye should reckon." M.Pickthall, *The Glorious Koran*, Sura 33, Verse 49; In Shi'i law, girls under the age of nine and women past menopause are also exempt from observing the *‘idda* (S.Haeri, *Law of Desire*, p.46, Hilli, *Idāh*, vol.3, p.337) In Sunni law, these women must observe the *‘idda*. (Ibn Qudama, *Al-Muḡnī*, vol.7, p.449).

⁹¹M.Pickthall, *The Glorious Koran*, Sura 2, Verse 230.

Slave status (*nikāḥ al-imāʾ*)

Islamic law sanctions sexual relations between free Muslim men and slave women, either in the form of concubinage or marriage. A man could have an unlimited number of concubines from among the slaves he owned, in addition to his four wives. If, however, he wanted to elevate the status of a concubine by marrying her, he could only do so on the condition that he first manumit her. In other words, Islamic law does not permit marriage between a man and his own slave. Ghazali said: "[The woman is *ḥarām*] if she is partly or entirely owned by the man wanting to marry her."⁹² The jurists generally disapprove of marriage between a free man and a slave woman, because, at least in Sunni law, the children resulting from such a union belong to the woman's master and inherit her slave status.⁹³

Legal minority

In general, minority is no impediment to marriage. All schools permit marriage for minor girls and boys, on the assumption that the marriage will only be consummated once both spouses have reached puberty.⁹⁴ There are, however, two exceptions to this general permission. One concerns the orphan girl. Ghazali said: "[An orphan] can only be married after she has reached maturity (*bulūḡ*)."⁹⁵

The other exception only occurs in Shafi'i law, and applies to the case of a non-virgin minor. Shafi'i law alone makes the right to force a woman into marriage (*wilāyat al-jabr*) contingent on her virginity - not, as do the other schools, on her minority. Thus a woman who has lost her virginity can no longer be forced into marriage, and her consent is needed. At the same time, however, the consent of a minor girl is without legal value. The result of this legal impasse is that, according to Shafi'i

⁹²Ghazali, *Iḥyāʾ*, vol.2, p.37; All schools agree that marriage and ownership are incompatible: Marghinani, *The Hedaya*, p.30; Hilli, *Idāḥ*, vol.3, p.135; Ibn Qudama, *Al-Muḡnī*, vol.6, p.610.

⁹³Ghazali, *Iḥyāʾ*, vol.2, p.29, p.37; Ibn Qudama, *Al-Muḡnī*, vol.6, p. 597. Marghinani, *The Hedaya*, p.61; 'Amali, *Al-Lumʿa*, p.169; Ibn Rushd, *Bidāya*, vol.2, p.37.

⁹⁴Y.Bellefonds, *Traité*, vol.2, p.48; Imami law explicitly prohibits sexual intercourse with a girl under the age of nine (Hilli, *Idāḥ*, vol.3, p.76).

⁹⁵Ghazali, *Iḥyāʾ*, vol.2, p.37.

law, a non-virgin minor must wait until she reaches maturity before she can enter marriage.⁹⁶

State of ritual consecration (*iḥrām*)

Before entering Mekka for the major Pilgrimage (*ḥajj*) or the minor Pilgrimage (*ʿumra*), the pilgrim, man or woman, enters a state of ritual consecration called *iḥrām*.

While he is in the state of *iḥrām*, the pilgrim "wears two seamless woollen or linen sheets, usually white, neither combs nor shaves, and observes sexual continence".⁹⁷

All schools except the Hanafis have ruled that a *muḥrim*⁹⁸ can not contract marriage, but has to wait until deconsecration has taken place. The Hanafis alone do not consider the state of *iḥrām* an obstacle to marriage.⁹⁹

Apostasy (*ridḍa*)

Marriage is prohibited between a Muslim and an apostate.¹⁰⁰ This prohibition is temporary since an apostate can return to Islam, at which point marriage is possible, provided all other requirements are fulfilled.

Wives of the Prophet

Finally, a woman is prohibited to any other man if "she was one of the wives of the Prophet at the time of his death, or one of the women with whom he had sexual relations, because they are the Mothers of the Believers. However, this impediment does not apply nowadays."¹⁰¹

BINDING EFFECTS OF MARRIAGE (AḤKĀM)

The Brideprice (*mahr*)¹⁰²

A permanent marriage envisages an extensive exchange of rights and obligations. The woman is bound by the contract to be available to her husband at all times and to obey

⁹⁶Y.Bellefonds, *Traité*, vol.2, p. 65; Ibn Qudama, *Al-Muḡnī*, vol.6, p.492; Ibn Rushd, *Bidāya*, vol.2, p.5.

⁹⁷H.Wehr, *A Dictionary of Modern Written Arabic*, ed. J.Milton Cowan, 3rd ed. (Wiesbaden: Otto Harrassowitz, 1971), p. 172.

⁹⁸person in the state of *iḥrām*.

⁹⁹Y.Bellefonds, *Traité*, vol.2, pp. 146-7; Mughniyya, *Marriage* Part 1, pp.71-2.

¹⁰⁰Ghazali, *Iḥyāʾ*, vol.2, p.36.

¹⁰¹Ghazali, *Iḥyāʾ*, vol.2, p.37.

¹⁰²Ibn Qudama, *Al-Muḡnī*, vol.6, pp.679-754; Ibn Rushd, *Bidāya*, vol.2, pp.16-28; Marghinani, *The Hedaya*, pp.44-57; Ghazali, *Al-Wajīz*, vol.2, pp.25-35; Hilli, *Idāh*, vol.3, pp.182-248.

him totally. He, in turn, must provide for her during the time of their marriage (*nafaqa*) and must pay her a sum of money (*mahr*) - or something of known monetary value¹⁰³ - that becomes exclusively hers. The woman is under no obligation to use her *mahr* to cover household expenses.¹⁰⁴ Given the ease with which an Islamic marriage can be ended at any time, the *mahr* safeguards the woman's economic position in case of divorce.¹⁰⁵

The *mahr* does not have to be mentioned at the time of contracting the marriage. In other words, marriage can be validly contracted without *mahr* being specified. Nevertheless, payment of *mahr* is an obligatory consequence of the marriage contract (*ḥukm*).¹⁰⁶ Islamic law distinguishes between two forms of *mahr*, *al-mahr al-musammā* (specified brideprice) and *mahr al-miṭl* (adequate brideprice). *Al-Mahr al-musammā* is the *mahr* agreed by the couple and specified by them in the contract.¹⁰⁷ All schools agree that the specified *mahr* does not have any (legal) upper limit¹⁰⁸, but differ concerning the lower limit.¹⁰⁹ If *mahr* remains unspecified in the contract, or if, for some reason, the *mahr* agreed on is invalid, the woman is entitled to an adequate brideprice, *mahr al-miṭl*. Also called customary brideprice, it is determined by a combination of factors, such as the precedent set by the dowries paid to other women of her family, and her physical and mental qualities (such as age, virginity, beauty, intelligence and piety).¹¹⁰

¹⁰³It is valid that *mahr* be specified in terms of currency, jewellery, farmland, cattle, profit, trade commodities and other things of value. The value must be known either exactly or approximately. Mughniyya, *Marriage according to five schools* *Islamic fiqh* Part 3 (*al-Tawhid*, Sept.-Nov.'87, vol.v, no.1, pp.117-130), p.118.

¹⁰⁴however, the woman can be asked to use part of the *mahr* to buy her dowry. Bellefonds, *Traité*, vol.2, p.236; Mughniyya, *Marriage* Part 3, p.128.

¹⁰⁵J.L.Esposito, *Family Law*, p.24.

¹⁰⁶in Maliki law, the payment of *mahr* is a condition for validity of the contract (*ṣart min šurūṭ al-ṣiḥḥa*); nevertheless, even in Maliki law, *mahr* does not have to be specified during the marriage contract. Y.Bellefonds, *Traité*, vol.2, pp.202-3; Ibn Rushd, *Bidāya*, vol.2, p.16, p.22.

¹⁰⁷Mughniyya, *Marriage* Part 3, p.117.

¹⁰⁸but Hilli, for example, repeatedly recommends an upper limit of 500 dirham.

¹⁰⁹But, as Y.Linant de Bellefonds points out (*Traité*, vol.2, p.207), the elaborate discussion among some scholars of the lowest permissible limit for *mahr* seems superfluous in view of the assumption that, in mediaeval times as much as today, women's greatest concern was to secure the largest possible dowry. This assumption is strengthened by Ghazali's admonition that women should ask for small dowries! (*Iḥyāʾ*, vol.2, pp.39-40).

¹¹⁰al-Jundi, *Précis*, pp.464-5; Marghinani, *The Hedaya*, pp.53-4.

All schools grant the woman the right to demand her full specified *mahr* as soon as the contract has been recited, and to refuse consummation of the marriage until the *mahr* is paid.¹¹¹ But all schools agree that payment of *mahr* can - with the woman's consent - also be deferred, partly or fully, as long as the period of deferment is known.¹¹² At the very latest, the woman is entitled to receive her full amount of *mahr* in case of dissolution of a consummated marriage. Generally, "the wife's claim for the unpaid portion of her dower is legally considered an unsecured debt ranking equally with other unsecured debts from her husband, or after his death, from his estate."¹¹³

The Malikis, Shafi'is and Hanbalis consider the husband's inability to pay *mahr* a reason for the woman to demand the dissolution of her marriage by the judge.¹¹⁴

Maintenance (*nafaqa*)

It is the husband's duty to provide his obedient wife with food, clothes and housing¹¹⁵ from the moment consummation of the marriage is made possible¹¹⁶ until termination of the marriage through death or divorce.¹¹⁷ The woman's right to be supported by her

¹¹¹Y.Bellefonds, *Traité*, vol.2, pp.238-9; Ibn Qudama, *Al-Muḡnī*, vol.6, p.738; Hilli, *Idāḥ*, vol.3, pp.196-7.

¹¹²A widely used practice is to divide the *mahr* into two parts, one to be paid at the conclusion of the marriage, the other on termination of the marriage. J.L.Esposito, *Family Law*, p.25; Y.Bellefonds, *Traité*, vol.2, pp.218-9.

¹¹³J.L.Esposito, *Family Law*, p.25; If the husband divorces his wife before consummation of the marriage, she is entitled to half the specified *mahr* (Ibn Rushd, *Bidāya*, vol.2, p.20; 'Amali, *Al-Lum'a*, p.170). If no *mahr* was specified, the woman must be given a present, according to all except the Maliki school (Hanafi, *The Hedaya*, pp.44-45; 'Amali, *Al-Lum'a*, p.170; Ibn Qudama, *Al-Muḡnī*, vol.6, pp.712-15; J.Schacht, "nikah", *Encyclopedia of Islam*, 1st ed.(Shafi'i)). If the husband dies prior to consummation of the marriage, the woman receives her full specified *mahr*, an adequate *mahr*, or a present.(Ibn Rushd, *Bidāya*, vol.2, p.19, p.23; Marghinani, *The Hedaya*, p.44; Hilli, *Idāḥ*, vol.3, p.198).

¹¹⁴Ibn Rushd, *Bidāya*, vol.2, p.45; Ibn Qudama, *Al-Muḡnī*, vol.6, p.739, J.Schacht, "nikah", *Encyclopedia of Islam*, 1st ed.(Shafi'i); Y.Bellefonds, *Traité*, vol.2, pp.239-40.

¹¹⁵and servants, if this is what she has been used to or is sick. For a full discussion of what *nafaqa* includes, see Y.Bellefonds, *Traité*, vol.2, pp.258-64.

¹¹⁶The jurists are divided over how this moment is determined. According to some (the Hanafi, the Shafi'i and the Hanbali school, and some Imamiyyah scholars), it is determined by the woman's condition alone; if she is physically capable of having sexual relations and makes herself available to her husband, she has a right to maintenance. The Malikis and some other Imamiyyah scholars have ruled, however, that the moment where *nafaqa* becomes obligatory is determined by both the woman's and the man's ability to have sexual relations. According to their laws, a minor boy incapable of having sexual intercourse is freed of the obligation to pay maintenance to his wife. According to yet another view, held by Shafi'i, the obligation to pay maintenance begins with contracting of the marriage. (Mughniyya, *Marriage* Part 5, p.160; Y.Bellefonds, *Traité*, vol.2, p.268; Hilli, *Idāḥ*, vol.3, p.268; Ibn Rushd, *Bidāya*, vol.2, p.47; Ghazali, *Al-Wajīz*, vol.2, pp.112-3, Marghinani, *The Hedaya*, p.141, Ibn Qudama, *Al-Muḡnī*, vol.6, pp.736-7).

¹¹⁷All schools agree that the husband must continue to support his wife during the *ʿidda* of a revocable divorce. They equally agree that, as an heir, she is not entitled to maintenance after her husband's death. There is disagreement over the maintenance of a divorcée during the *ʿidda* of an irrevocable divorce. (Mughniyya, *Marriage according to five schools of Islamic fiqh* Part 5 (al-Tawhid, Mar.-Aug.'88, vol.v, no.3 &4, pp.153-177) p.159).

husband is not contingent on her need - being a compensation for her obedience and sexual availability, this right exists irrespective of her personal wealth. However, her right to maintenance is contingent on her obedience: all schools agree that a disobedient wife (*nāšiza*) forfeits her maintenance rights. But the schools disagree over the factors that constitute obedience. All agree that to be considered obedient, a woman must confine herself to her house, leaving it only with her husband's permission. A woman who abandons the conjugal home is a *nāšiza*. All schools, except the Hanafi school, further agree that an obedient wife must allow her husband free access to her person at all times, unless she has a legal excuse. Only the Hanafi school grants the woman the right to refuse sexual intercourse with her husband without being classified as disobedient.¹¹⁸ All other schools consider the refusal of intercourse a reason for the husband to stop maintenance payment.¹¹⁹

There are certain cases in which the woman can legally refuse her husband access to her body, leave his house and/or refuse to reside in the house he has provided for her, and still claim maintenance. One such example is the woman's refusal to make herself available to her husband until he has paid her the brideprice agreed to be paid in advance.¹²⁰ Other cases would be inordinately cruel treatment of the wife by her husband, or lodging her in inadequate housing.¹²¹

A woman is entitled to food, clothing and housing. Regarding the standard of living due to her, all schools agree, that "maintenance will be determined in accordance with the financial status of the two if both are of equal status."¹²² If, however, their status differs, the law offers three different solutions: either a mean is established between her standard of living and his, his means determine the maintenance he can provide or her status determines what is due to her.¹²³

¹¹⁸this school considers the woman's refusal to have sex as inconsequential, for as long as she is present in her husband's house, he can force her. Marghinani, *The Hedaya*, p.14.

¹¹⁹Ibn Rushd, *Bidāya*, vol.2, p.48, Ibn Qudama, *Al-Muḡnī*, vol.6, p.736, Ghazali, *Al-Wajīz*, vol.2, p.40, p.112, Hilli, *Idāh*, vol.3, pp.266-7, p.274.

¹²⁰Mughniyya, *Marriage* Part 5, p.161. Y.Bellefonds, *Traité*, vol.2, p.267, (p.238); Ibn Qudama, *Al-Muḡnī*, vol.7, p.604 f.

¹²¹Mughniyya, *Marriage* Part 5, p.161; Y.Bellefonds, *Traité*, vol.2, p.267; J.L.Esposito, *Family Law*, p.26

¹²²Mughniyya, *Marriage* Part 5, p.164.

¹²³Mughniyya, *Marriage* Part 5, pp.164-5; Y.Bellefonds, *Traité*, vol.2, p. 262.

If the husband fails to provide maintenance for his wife, the law has created ways and means for her to claim it. These range from simply taking from his money and possessions what she needs for her upkeep, having the court order her husband to pay maintenance, seizing his assets, borrowing in his name and, finally, demanding separation by judicial decree.¹²⁴ According to Hanafi law and the better known view of the Imamiyyah school, the husband's failure to pay maintenance is not a reason for separation; all other schools grant the woman this option.¹²⁵

Obedience-the wife's duties

In return for fulfilling his financial obligations towards his wife, the husband gains full control over her. Ghazali said about a wife's duties towards her husband: "Her duties are clearly described in the statement that marriage is a kind of enslavement, and that she is his slave. She owes her husband absolute obedience in all that he demands of her concerning herself, as long as it does not involve sin."¹²⁶

The law has defined several aspects of conjugal life in which the husband can demand his wife's total compliance with his wishes. Two have already been mentioned, his unlimited right to intercourse, and his right to control his wife's movements. The latter not only allows the husband to limit her movements outside the house, it also allows him control over the visits she receives. The husband also has the right to choose the conjugal home and, provided it is adequate¹²⁷, can demand that the woman live there. He can also demand that she accompany him on his travels. Finally, the law grants the husband the right to use corporal punishment against his wife, as outlined in the Quranic verse: "As for those from whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them."¹²⁸

¹²⁴Y.Bellefonds, *Traité*, vol.2, pp. 279-283.

¹²⁵Y.Bellefonds, *Traité*, vol.2, p. 464; Marghinani, *The Hedaya*, p.142; Hilli, *Īdāh*, vol.3, p.280; Ibn Rushd, *Bidāya*, vol.2, p.45; Ibn Qudama, *al-Muḡnī*, vol.7, pp.573-4.

¹²⁶Ghazali, *Iḥyāʾ*, vol.2, p.56.

¹²⁷the woman can not be asked to share her living space with the husband's relatives, her own relatives or her husband's other wife or wives. She can also refuse to move into a house that is inadequately furnished, situated in a bad neighbourhood, unhealthy or otherwise unsuitable (Y.Bellefonds, *Traité*, vol.2, p.289; Mughniyya, *Marriage* Part 5, p.167; Marghinani, *The Hedaya*, p.143).

¹²⁸M.Pickthall, *The Glorious Koran*, Sura 4, Verse 34. Khalil bn Ishaq al-Jundi said: "Lorsqu'une femme méconnaît ce qu'elle doit de respect, de soumission à son mari, [ou lorsqu'elle se refuse à ses caresses, ou se montre acariâtre] le mari lui fera des exhortations et des remontrances [la rappellera dans la voie du devoir, lui parlera des destinées de l'autre vie]; quand il n'obtiendra pas d'amendement, il exclura cette femme du lit marital; à défaut du succès encore, il la battra, s'il pense qu'un moyen violent puisse être utile et puisse la

DISSOLUTION OF MARRIAGE¹²⁹

An important aspect of Muslim marriage is the fact that it is not, by definition, a permanent relationship: Islamic law grants the husband, and, to a far more limited degree, the wife, the right to terminate marriage. But even though the law makes separation possible, and particularly easy for the man, it actively discourages its irresponsible and unnecessary use. At the same time, the law makes various provisions for a repentant spouse to return to her or his partner. Some of the ways of renewing marital relations are more difficult than others - however, in the great majority of cases, the renewal of marital relations remains a possibility.

A Muslim marriage contract can be dissolved in one of three ways: unilateral repudiation (*ṭalāq*), divorce by mutual consent (*kulʿ*) and annulment (*faskh*).

Unilateral repudiation: *ṭalāq al-sunna* and *ṭalāq al-bidʿa*

Repudiation (*ṭalāq*) is the husband's exclusive right, which he can exercise at any time, without explaining his motives and without the need to resort to the courts.¹³⁰

The wife has no legal powers to oppose his decision. The law distinguishes between two forms of repudiation, *ṭalāq al-sunna*, repudiation according to the *sunna*, and *ṭalāq al-bidʿa*, irregular repudiation. In Sunni law, the distinction between these two forms of divorce is entirely moral, not legal- both *ṭalāq al-sunna* and *ṭalāq al-bidʿa* have the effect of ending the marriage. In Shi'i law, however, *ṭalāq al-bidʿa* is simply considered invalid.¹³¹ But even Sunni jurists strongly disapprove of *ṭalāq al-bidʿa*¹³² and encourage the use of *ṭalāq al-sunna*. Essential features of divorce

ramener au bien. [Les coups ne doivent produire ni fracture, ni blessure, ni contusion sérieuse.]"(Khalil bn Ishaq al-Jundi, *Précis*, p.509-10).

¹²⁹discussed will be the dissolution of marriage at the voluntary instigation of at least one of the spouses. The discussion will not include reference to void (*bāṭil*) or irregular (*fāsid*) marriages, which are dissolved automatically, and regardless of the couple's wishes, once the error is discovered.

¹³⁰In order to exercise his right of repudiation, the man must be a mentally competent adult (except in Hanbali law, which considers valid the divorce pronounced by a child of discerning age, *mumayyiz*) under no duress (except in Hanafi law), who, according to the Imamiyyah, must pronounce repudiation intentionally (Mughniyya, *Divorce According to Five Schools of Islamic Law* Part 1, (*al-Tawhid*, 1988, vol.vi, No.1, pp.65-82) p.65-66; 'Amali, *Al-Lumʿa*, p.179; Marghinani, *The Hedaya*, p.75; Ibn Qudama, *Al-Muḡnī*, vol.7, p.116; Ibn Rushd, *Bidāya*, vol.2, p.71; Ghazali, *Al-Wajīz*, vol.2, p.53).

¹³¹Unless, that is, the man has pronounced the divorce formula thrice in one go - in that case Shi'i jurists disagree over whether the divorce is void or whether the three-in-one formula is counted as one revocable divorce. Mughniyya, *Divorce* Part 1, p.68; S.Haeri, *Law of Desire*, p.44; 'Amali, *Al-Lumʿa*, p.180; Hilli, *Idāh*, vol.3, p.310.

¹³²Ghazali went so far as to call the use of *ṭalāq al-bidʿa* "prohibited, even if it is legally effective (*ḥarām wa in kāna wāqīʿan*)" (Ghazali, *Iḥyāʾ*, vol.2, p.55.) Linant de Bellefonds described *ṭalāq al-bidʿa* as "parmi

according to the *sunna* are that it requires both deliberation and patience on behalf of the divorcer and allows him to revoke his decision with ease - features which help to prevent or repair the (ab)use of divorce. If these principles of *ṭalāq al-sunna* are violated, divorce is considered irregular (*bidʿa*).

All schools agree that the two essential ingredients of *ṭalāq al-sunna* are 1) pronouncing it during the woman's period of inter-menstrual purity (*ṭuhr*) 2) during which no intercourse has taken place.¹³³ The Shafi'i school considers as *ṭalāq al-sunna* any repudiation that fulfils these two conditions.¹³⁴ The three other Sunni schools as well as the Imamiyyah further stipulate that the repudiation formula must be pronounced only once at a time for the divorce to count as *sunna*.¹³⁵ The Imamiyyah differs from all other schools in that it adds childbed, *nifās*, to the period of impurity during which a woman cannot be divorced and demands the presence of two just (*ʿādil*) male witnesses at the time of repudiation.¹³⁶

Violation of the above rules changes the character of the divorce - it becomes irregular (*bidʿa*). However, the effects of this change of character vary according to the legal school and to the rules that have been disregarded. Shi'i law is the strictest - according to its laws, violation of any of the above rules renders the divorce not only irregular (*bidʿa*), but also void.¹³⁷ According to the four Sunni schools, a divorce that is pronounced while the woman is menstruating, or during a time of inter-menstrual period during which intercourse has taken place is irregular - however, it is still legally effective.¹³⁸ All Sunni schools disapprove of it, not only because it prolongs the woman's waiting period of three menstrual cycles, but also because it eliminates the element of deliberation and patience built into *ṭalāq al-sunna*. But only the Maliki

les actes condamnés religieusement, ou *ḥarām*, mais valable juridiquement." (Y.Bellefonds, *Traité*, vol.2, pp.321-2).

¹³³this is relevant for women with whom marriage has been consummated and who menstruate. Pre-pubescent girls, wives with whom marriage has not been consummated, as well as pregnant or menopausal women, can be divorced at any time. (Mughniyya, *Divorce* Part 1, p. 68).

¹³⁴Ghazali, *Al-Wajīz*, vol.2, p.50; Ibn Rushd, *Bidāya*, vol.2, p.55.

¹³⁵Ibn Qudama, *Al-Muḡnī*, vol.7, p.98 f.; Ibn Rushd, *Bidāya*, vol.2, p.55f.; Marghinani, *The Hedaya*, p.72.

¹³⁶Amali, *Al-Lumʿa*, pp.179-180.

¹³⁷Hilli, *Idāh*, vol.3, p.310; except for those scholars who count the three-in-one divorce formula as one (valid) divorce. 'Amali, *Al-Lumʿa*, p.180.

¹³⁸Y.Bellefonds, *Traité*, vol.2, p.319; Ibn Qudama, *Al-Muḡnī*, vol.7, p.99-100; Marghinani, *The Hedaya*, p.73-74; Ghazali, *Al-Wajīz*, vol.2, p. 51.

school translated moral disapproval into practical consequences - even though Maliki law agrees with the three other Sunni schools that a divorce pronounced during the woman's period is legally valid, this school demands that a man take back a wife divorced at such a time.¹³⁹

The most serious consequences result from violation of the condition that the divorce formula be pronounced once. All Sunni schools agree that if a man divorces his wife by pronouncing the divorce formula three times at once, the divorce is not only considered irregular¹⁴⁰, it also becomes irrevocable (*bā'in*). One important feature of *ṭalāq al-sunna* is revocability: for three months following the divorce, the husband has the right to simply go back on his decision to separate from his wife and to renew marital relations. This rule is in line with the law's general disapproval of divorce coupled with a preference for reconciliation. However, the law has protected women against the emotional turmoil of being divorced repeatedly, only to be taken back by a repenting husband, by limiting the times he can repeat this procedure to two. If the man pronounces a third divorce, even though months or years might have passed, the third divorce becomes irrevocable.¹⁴¹ At that point, marital relations can only be renewed with great difficulty and only with the woman's approval and cooperation. For a number of reasons - ranging from speaking in anger, the wish to reduce maintenance obligations to simply wanting to deprive himself of the option of taking his wife back - a man might choose to pronounce three divorce formulas at once, thus rendering the marriage irrevocable. In doing so, the divorcer is violating important aspects of *ṭalāq al-sunna*, such as reconciliation and patience. In return, he is punished - should he, after all, regret his impatient behaviour, he can only return to his wife with great difficulty.¹⁴² Imamiyyah law prevents this conflict from arising by simply invalidating the three-in-one pronouncement of the divorce formula.

¹³⁹Ibn Rushd, *Bidāya*, vol.2, p.55; The Hanafi jurist Marghinani supports this view (*The Hedaya*, p.74).

¹⁴⁰except in Shafi'i law.

¹⁴¹M.Pickthall, *The Glorious Koran*, Sura 2, Verse 230: "And if he hath divorced her (the third time), then she is not lawful unto him thereafter until she hath wedded another husband."

¹⁴²His former wife only becomes lawful to him again if she goes through the process of *taḥlīl*, described in the section on "Irrevocable divorce (*ṭalāq bā'in*)" above.

Divorce by mutual consent (*kul^c*)¹⁴³

In Islamic law, the right to implement divorce is reserved for the husband. However, the law grants the mentally competent adult woman¹⁴⁴ the right to initiate repudiation. In return for some form of financial compensation which she offers to her husband, he can agree to repudiate her. His consent is essential since the repudiation must be pronounced by him, not by the judge or anyone else. This exchange of money for freedom is sanctioned by the Quran, where it says: "And is it not lawful for you that ye take from women aught of that which ye have given them; except (in the case) when both fear that they may not be able to keep within the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if the woman ransom herself."¹⁴⁵

The woman offers her husband a financial compensation in return for his divorcing her. The value or the substance of this compensation is not determined by the law.¹⁴⁶ It can take the form of a direct payment handed over by the woman to her husband. But it can also take the form of the woman ceding financial claims she holds against her husband, such as arrears on her maintenance payment, or the second part of her brideprice. As a third option, the woman can offer to take responsibility for the maintenance of children that resulted from the marriage. Normally, the support of minor children, even those living with their mother, is the responsibility of the father.¹⁴⁷

The schools variously define *kul^c* as a form of repudiation (*ṭalāq*) or as an annulment of the marriage (*faskh*).¹⁴⁸ Lawyers who consider it to be a repudiation always treat it as an irrevocable (*bāʿin*) one, albeit of the smaller kind (*ṭalāq bāʿin*

¹⁴³"In metaphorical language the Quran refers to man and wife as each other's 'raiment' that clothe and cover one another (2:187). Properly speaking, *kul^c* means to take off, for instance, one's clothes. A divorce of the *kul^c* kind is initiated by the woman who feels strong reluctance towards her husband and is no longer willing to 'wear' him, as it were." (S.Haeri, *Law of Desire*, p.44); Ibn Qudama, *Al-Muḡnī*, vol.7, p.51-96; Marghinani, *The Hedaya*, pp.112-117; Ghazali, *Al-Wajīz*, vol.2, pp.41-50; Ibn Rushd, *Bidāya*, vol.2, pp.58-62; 'Amali, *Al-Lum^a*, pp.184-186; Hilli, *Idāh*, vol.3, pp.374-399; Y.Bellefonds, *Traité*, vol.2, pp.419-447.

¹⁴⁴special regulations apply to the demented and the minor woman. They will not be discussed here.

¹⁴⁵M.Pickthall, *The Glorious Koran*, Sura 2, Verse 229.

¹⁴⁶Ghazali pointed out that "it is reprehensible for the man to take as ransom from the woman more than he gave her in dowry." (*Iḥyāʿ*, vol.2, p.55).

¹⁴⁷Y.Bellefonds, *Traité*, vol.2, p.439.

¹⁴⁸Ibn Rushd, *Bidāya*, vol.2, p.60; Hilli, *Idāh*, vol.3, p.376; Ghazali, *Al-Wajīz*, vol.2, p.41; Ibn Qudama, *Al-Muḡnī*, vol.7, p.56; Marghinani, *The Hedaya*, p.112.

bainūna suġra).¹⁴⁹ The minor irrevocable repudiation differs from a revocable divorce in that it does not give the husband the right to take his wife back during her *‘idda*, regardless of her approval. And it differs from the major irrevocable divorce that follows a third repudiation in that it allows the couple to renew marital relations in form of a new marriage contract should they regret their decision (unless the *kul*^c repudiation is the woman's third repudiation by the same husband).¹⁵⁰ Assuming that it is difficult enough for a woman to persuade her husband to grant her a divorce, it is only fair to prevent him from simply taking her back against her will.¹⁵¹ At the same time, and given the ease with which a man can retract on a revocable divorce, it is equitable that the woman be given at least the possibility to return to her former husband in case of regret, albeit with his cooperation.

Dissolution of the marriage by juridical decree

Both spouses can effect the dissolution of their marriage. In some cases, dissolution takes place automatically following a certain act on behalf of one of the partners¹⁵², in other cases, the intervention of the judge is required to end the conjugal union.

Dissolution of the marriage by the judge can take the form of annulment (*fask*) or juridical divorce (*ṭalāq*). Maliki law, in particular, classifies most cases of separation through the judge as juridical divorce.¹⁵³ The judge takes on the position of the husband, pronouncing the divorce in his name. Depending on the reasons for separation, the legal effects of annulment (*fask*) and/or juridical divorce (*ṭalāq*) range from revocable divorce to permanent prohibition to remarry.

Both husband and wife can ask the judge to dissolve their marriage if their partner has physical defects or illnesses, particularly those rendering sexual intercourse

¹⁴⁹Y.Bellefonds, *Traité*, vol.2, p. 442, p.444.

¹⁵⁰Ibn Rushd, *Bidāya*, vol.2, p.61; Shi'i law allows the woman to return to her husband during her *‘idda*, provided he agrees, without the need to draw up a new contract. 'Amali, *Ḥl-Lum'a*, p.184.

¹⁵¹Ibn Rushd said: "If the husband was allowed to take his wife back during her *‘idda* [without her consent], her previous release [from the marriage] would be meaningless." *Bidāya*, vol.2, p.60.

¹⁵²such as apostasy, or if the husband swears the oath of continence (*ilāʿ*).

¹⁵³Y.Bellefonds, *Traité*, vol.2, p.453.

between the spouses difficult or impossible. Also considered are leprosy, madness and leucoderma.¹⁵⁴

The possibility of resorting to the legal authorities is particularly important for women, since they have no other way of escaping from marriage to a man unwilling to divorce them. Women can ask the judge to dissolve their marriage for the following reasons¹⁵⁵: the husband's failure to pay the brideprice¹⁵⁶, his prolonged absence¹⁵⁷, cessation of conjugal relations¹⁵⁸, the husband's failure to provide the woman with food, housing and clothing (*nafaqa*)¹⁵⁹, harm he causes to the woman, marital discord (*šiqāq*) and non-observance of conditions included in the marriage contract.¹⁶⁰

The schools differ widely over the reasons they accept from a woman asking for the dissolution of her marriage. Generally speaking, the Hanafi school is the most restrictive. According to Hanafi law, a woman can only demand the dissolution of her marriage if her husband is unable to have sexual relations.¹⁶¹ None of the other reasons quoted above is accepted by this school. The Malikis, in contrast, order their judges to dissolve the woman's marriage for all but one of the abovementioned reasons, namely non-observance of conditions included in the marriage contract (the simple

¹⁵⁴Defects other than sexual defects which make intercourse impossible are not accepted by Hanafi law. Y.Bellefonds, *Traité*, vol.2, p.469, p.454, p.451; Marghinani, *The Hedaya*, p.126-8; Ibn Rushd, *Bidāya*, vol.2, pp.44-45; Ibn Qudama, *Al-Muḡnī*, vol.6, p.651; Ghazali, *Al-Wajīz*, pp.18-21; Hilli, *Idāh*, vol.3, pp.175-8.

¹⁵⁵Y.Bellefonds, *Traité*, vol.2, pp.449-471

¹⁵⁶Ibn Qudama, *Al-Muḡnī*, vol.6, p.739; Ibn Rushd, *Bidāya*, vol.2, p.45 (reference to Shafi'i).

¹⁵⁷Ibn Rushd, *Bidāya*, vol.2, pp.45-6.

¹⁵⁸to this category belongs the husband's announced intention to stop conjugal relations, at least for a certain time. This is called *ilāʾ*, the oath of continence. The husband swears that he will not touch his wife for a period of at least four months. After four months, the woman has the option of turning to the judge, who can order her husband to either renew conjugal relations with her, or to divorce her. The husband's failure to comply leads to dissolution of the marriage through juridical divorce. Hanafi law differs on this matter from all other four schools. According to the Hanafi jurists, the expiry of the four months period during which the husband has not touched his wife automatically leads to annulment of the marriage, whether the woman wants this or not. (Y.Bellefonds, *Traité*, vol.2, pp.378-9; 'Amali, *Al-Lumʿa*, pp. 188-9; Hilli, *Idāh*, vol.3, p.432; Ghazali, *Al-Wajīz*, vol.2, pp.72-78; Marghinani, *The Hedaya*, pp.109-112; Ibn Rushd, *Bidāya*, vol.2, pp.86-91; Ibn Qudama, *Al-Muḡnī*, vol.7, pp.298-337).

¹⁵⁹Hilli, *Idāh*, vol.3, pp. 280-283; Ibn Rushd, *Bidāya*, vol.2, p.45 (reference to Shafi'i, Maliki and Hanbali law); Ghazali, *Al-Wajīz*, vol.2, p.114; Ibn Qudama, *Al-Muḡnī*, vol.6, p.654.

¹⁶⁰Hanbali law alone allows the woman to insert clauses in her marriage contract stipulating that the husband must not take her away from her house or country, and must not take a concubine or a second wife. If the husband fails to observe these clauses, the woman can ask for annulment of her marriage. (Y.Bellefonds, *Traité*, vol.2, p.468; Ibn Qudama, *Al-Muḡnī*, vol.6, p.548).

¹⁶¹Y.Bellefonds, *Traité*, vol.2, p.451; Marghinani, *The Hedaya*, pp.126-8.

reason being that Maliki law does not permit the inclusion of conditions in the contract in the first place).

The husband can bring about the dissolution of his marriage by making a sworn allegation of adultery (*li^cān*) against his wife.¹⁶² This procedure can be used by a man who has reasons to suspect his wife of adultery, but who cannot provide the four witnesses required to testify in the case of adultery. If he further suspects the child she is carrying to result from her extramarital affair, this method allows him to deny his fatherhood. If the woman responds to the accusation with another oath¹⁶³, protesting her innocence, the marriage is separated.¹⁶⁴

Finally, apostasy of either partner ends the marriage.¹⁶⁵

In most cases, the dissolution of marriage through the judge takes the form of a minor irrevocable divorce or annulment. Only few cases digress from this general rule. In Maliki law, a woman whose husband is unable to support her can demand the dissolution of her marriage through juridical decree. However, the divorce remains revocable. If, during the woman's *‘idda*, the husband can secure the means to support her, he has the right to renew conjugal relations.¹⁶⁶ Also, according to Hanbali, Shafi'i, Maliki and Shi'i law, the husband's sworn statement of continence (*ilā^ʿ*) provides grounds for the woman to apply for a revocable, but not an irrevocable divorce.¹⁶⁷ The husband can take his wife back during her *‘idda*. The only time separation results in a permanent prohibition to remarry is in the case of annulment following pronouncement of the oath of anathema (*li^cān*). Only Abu Hanifa permits remarriage following *li^cān*.¹⁶⁸

¹⁶²the procedure has been described above.

¹⁶³except in Shafi'i law, see above.

¹⁶⁴Amali, *al-Lum'a*, pp.190-2; Ghazali, *al-Wajiz*, vol.2, pp.84-93; Marghinani, *The Hedaya*, pp.123-6; Ibn Rushd, *Bidāya*, vol.2, pp.100-107; Ibn Qudama, *al-Muḡnī*, vol.7, p.390 ff.

¹⁶⁵Y.Bellefonds, *Traité*, vol.2, p.308, p.453; Ibn Qudama, *al-Muḡnī*, vol.6, pp.638-641; Hilli, *Idāh*, vol.3, p.276, p.297; Ibn Qudama explains that in cases where apostasy takes place in a consummated marriage, some jurists only declare the marriage over after the woman's waiting period has expired. If the apostate converts back to Islam during that period, the marriage continues.

¹⁶⁶Y.Bellefonds, *Traité*, vol.2, p.453.

¹⁶⁷Ibn Rushd, *Bidāya*, vol.2, p.88; Ibn Qudama, *al-Muḡnī*, vol.7, p.331; Hilli, *Idāh*, vol.3, p.179.

¹⁶⁸Marghinani, *The Hedaya*, p.125.

THE EFFECTS OF REPUDIATION:

Revocable divorce (*ṭalāq rajʿī*):

A divorce remains revocable unless 1) it is the woman's third divorce, 2) the husband has used the three-in-one divorce formula (or any expression assimilated to the three-in-one formula¹⁶⁹), 3) the divorce takes place at the woman's request (*kulʿ*) 4) it is a juridical divorce¹⁷⁰, 5) it takes place prior to consummation of the marriage.¹⁷¹

Upon pronouncement of divorce the woman begins to observe a waiting period (*ʿidda*). If the divorce is revocable, the man has the right to renew conjugal relations with his wife at any time during her waiting period. If he does not revoke his decision to divorce her during the *ʿidda*, the divorce becomes effective automatically once her *ʿidda* has expired. Marriage between the two can then only be renewed in form of a new marriage contract and the payment of a new brideprice. During the *ʿidda* following a revocable divorce, the husband must continue to maintain his wife fully, and she must continue to obey him. If one of the spouses dies during the *ʿidda*, the other inherits. The outstanding part of the woman's brideprice becomes payable upon expiry of her *ʿidda*.

Minor irrevocable divorce (*ṭalāq bāʿin bainūna suḡrā*)

A divorce is irrevocable, but the marriage renewable with the woman's consent 1) if it takes place at the woman's request (*kulʿ*), 2) if it is a juridical divorce, 3) if the divorce occurs prior to consummation of the marriage¹⁷² 4) if the divorcee is a pre-pubescent girl or a menopausal woman¹⁷³, 5) the husband has used a figurative expression or an expression of vehemence or amplification.¹⁷⁴

The pronouncement of an irrevocable divorce, minor or major, ends marriage immediately. The husband loses his right to take his wife back during her *ʿidda*. The

¹⁶⁹in Hanafi, Hanbali and Maliki law only (Y.Bellefonds, *Traité*, vol.2, p.370-1)

¹⁷⁰except if the reason for separation is 1) the husband's failure to provide maintenance, in which case the divorce is revocable in Maliki law, 2) pronouncement of the *ilāʿ*, in which case divorce is revocable except in Hanafi law.

¹⁷¹or, in Shi'i law, before puberty or after menopause: 'Amali, *al-Lumʿa*, p.180.

¹⁷²Ibn Qudama, *ʿAl-Muḡnī*, vol.7, p.274; Ibn Rushd, *Bidāya*, vol.2, p.75; 'Amali, *ʿAl-Lumʿa*, p.180.

¹⁷³in Shi'i law only: 'Amali, *ʿAl-Lumʿa*, p.180.

¹⁷⁴in Hanafi law only (Y.Bellefonds, *Traité*, vol.2, pp.407-8; Marghinani, *The Hedaya*, pp.82-3, pp.107-8; Ibn Qudama, *ʿAl-Muḡnī*, vol.7, p.127f.).

spouses are relieved of mutual rights and obligations, except for the woman's maintenance, which, according to some schools, must be paid throughout her *‘idda*. But the schools differ widely over the maintenance payable to a wife following an irrevocable divorce: according to Hanbali and Shi'i law, she loses all her previous maintenance rights¹⁷⁵, according to Maliki and Shafi'i law, she has the right to be lodged, but neither to be clothed nor fed¹⁷⁶, while according to Hanafi law, she has the same maintenance rights throughout her *‘idda* as in marriage.¹⁷⁷ The situation is different if the woman is pregnant - in that case all schools grant her full maintenance.¹⁷⁸ The outstanding part of the woman's brideprice becomes payable immediately. The spouses lose their mutual inheritance rights, unless the irrevocable divorce is pronounced during the husband's fatal illness.¹⁷⁹ But the minor irrevocable repudiation differs from the major form (discussed below) in that it allows the couple to remarry, either during or after the expiry of the woman's *‘idda*. All they need to do is contract a new marriage, under observation of all the terms of validity, such as the presence of witnesses, consent of the woman or her *walīy*, and payment of a new brideprice.¹⁸⁰

Major irrevocable divorce (*ṭalāq bā'in bainūna kubrā*)

A divorce becomes irrevocable if 1) it is the woman's third divorce, 2) the husband has used the three-in-one divorce formula (or any expression assimilated to the three-in-one formula¹⁸¹).

Irrevocable divorce of the major kind produces the same effects as the minor irrevocable divorce. Marriage ends immediately, the man loses his right of taking the

¹⁷⁵Amali, *al-Lum'a*, p.183; Ibn Qudama, *Al-Muḡnī*, vol.7, p.606f..

¹⁷⁶Ibn Rushd, *Bidāya*, vol.2, p.72; Ghazali, *Al-Wajīz*, vol.2, p.113.

¹⁷⁷Marghinani, *The Hedaya*, p.145.

¹⁷⁸M.Pickthall, *The Glorious Koran*, Sura 65, Verse 6: "And if they are with child, then spend for them till they bring forth their burden."

¹⁷⁹This provision, which exists in all schools, intends to protect the woman against being deprived of her inheritance rights by a dying husband. Under normal circumstances, a woman inherits during the *‘idda* following a revocable divorce but not following an irrevocable divorce. If, however, the husband divorces his wife while he is suffering from a fatal illness, she keeps her inheritance rights, even if the divorce is irrevocable, either throughout her *‘idda*, or, according to some jurists, even beyond. Ibn Qudama, *Al-Muḡnī* vol.6, p.329 f. (reference to consensus among all Sunni jurists); Hilli, *Idāh*, vol.3, p.322; Ibn Rushd, *Bidāya*, vol.2, p.72; Marghinani, *The Hedaya*, pp.99-100.

¹⁸⁰Y.Bellefonds, *Traité*, vol.2, pp.404-5.

¹⁸¹ in Hanafi, Maliki and Hanbali law only, see above (Y.Bellefonds, *Traité*, vol.2, pp.370-1).

woman back, and the couple is relieved of mutual rights and obligations (except the woman's maintenance rights). However, other than in the case of minor irrevocable divorce, a major irrevocable divorce does not allow the couple to remarry unless the woman contracts and consummates marriage with another man, called a *muḥallil*, who subsequently divorces her.

According to all schools, a husband can divorce his wife in a way that leaves him with the option of taking her back easily (ie. revocable divorce). However, according to Sunni law, the man can exclude the option of taking his wife back by pronouncing an irrevocable divorce. At the same time, Hanbali, Shafi'i and Maliki law makes it very difficult for a repenting husband to renew marital relations with his wife following an irrevocable divorce. According to the three schools, a new marriage between them is only possible if the woman undergoes the process of *tahḥil*. The principle behind these laws is to encourage a divorce procedure that permits easy reconciliation and to discourage rash use of divorce. Hanafi law reduces the impact of the discouraging effect of irrevocable divorce by permitting a man to divorce his wife irrevocably, but allowing the couple to remarry without the woman having to go through an intervening marriage (ie. a minor irrevocable divorce).¹⁸²

Annulment (*faskh*)

The annulment of marriage can either take place automatically following an action by one of the spouses (such as apostasy), or it can be pronounced by the judge following a request for annulment from either husband or wife. By definition, the annulment of marriage can only be irrevocable. Nevertheless, the marriage is renewable, except in the case of *li'ān* discussed above. One of the distinguishing features of separation by annulment is that it does not count towards the three repudiations which eventually make marriage between the couple impossible without the intervention of a *muḥallil*.¹⁸³ In other words, a marriage can theoretically be annulled and renewed indefinitely without the woman having to go through an intervening marriage.

¹⁸²Y.Bellefonds, *Traité*, vol.2, pp.407-8, Marghinani, *The Hedaya*, pp.82-3, pp.107-8; Ibn Qudama, *Al-Muḡnī*, vol.7, p.127 f.

¹⁸³Hilli, *Idāḥ*, vol.3, p.179; Ibn Rushd, *Bidāya*, vol.2, pp.61-2.

However, since each renewal of marital relations must take the form of a new marriage, the woman's consent is obligatory.

Upon the termination of her consummated marriage, the woman must always observe a waiting period, irrespective of the reasons for separation. Equally, the woman is entitled to the outstanding part of her dowry. The effects of annulment on inheritance and maintenance rights during the waiting period are the same as in the case of an irrevocable divorce (discussed above). Otherwise, the effects of annulment vary according to the reason for separation and the moment when it takes place: in the case of apostasy or physical defects, for example, the woman's claim to her dowry is influenced by whether the marriage is annulled before or after consummation, and by whether the fault is to be found with her or with the man.¹⁸⁴ In some cases, the effects are self-explanatory; thus a woman who asks that her marriage be dissolved because her husband is unable to pay her dowry or her maintenance - in other words: because he is in financial difficulties - cannot expect to receive either her dowry or maintenance payments during her waiting period.

Ability to remarry

Following the dissolution of his marriage, a man is at liberty to remarry immediately. If, however, he has divorced his fourth wife, and is still married to three women, he has to wait for the expiry of his wife's *‘idda* before he can once more increase the number of his wives to four. According to Shafi'i, Imamiyyah and Maliki law, this rule only applies if the woman is observing the *‘idda* following a revocable divorce. But according to Hanafi and Hanbali law, it also applies in case of an irrevocable divorce. If, however, he remains married to only one or two women, the revocable separation from his other wife is no obstacle to a new marriage.

In contrast, women have to postpone the contracting of a new marriage until after the expiry of their *‘idda*, since it is a period of sexual abstinence designed to establish whether pregnancy has resulted from the previous marital union. The woman is free, however, to arrange a new marriage during the course of her *‘idda*, and to contract it

¹⁸⁴see, for example, Ibn Qudama, *Al-Muḡnī*, vol.6, p.638 f.; Ibn Rushd, *Bidāya*, vol.2, pp.44-5; Ghazali, *Al-Wajīz*, vol.2, pp.30-31.

as soon as the waiting period expires. The length of the waiting period varies according to the woman's status, her condition, whether the marriage was consummated and the way it was dissolved. Women who are divorced prior to consummation of their marriage (or, in Shi'i law, who are minor or menopausal) do not observe a waiting period. On the other hand, if the divorcée is pregnant, she has to wait for the delivery of her child before she can contract a new marriage.

DIFFERENCES BETWEEN SHI'I AND SUNNI LAW: TEMPORARY MARRIAGE (NIKĀḤ AL-MUT^cA)¹⁸⁵

Sunni and Shi'i law differs little on aspects of marriage discussed so far. However, the two disagree strongly over the legality of contracting marriage for a limited term. All Sunni schools strictly prohibit the inclusion of a time clause in the marriage contract. If it is included, they consider the marriage contract null and void.¹⁸⁶ Shi'i law, however, permits temporary marriage, known in Arabic as *nikāḥ al-mut^ca* (marriage of pleasure). "Ideologically, the Shi'i doctrine distinguishes temporary marriage, *nikāḥ al-mut^ca*, from permanent marriage, *nikāḥ al-dā'im*, in that the objective of *mut^ca*, is sexual enjoyment whereas that of *nikāḥ* is procreation."¹⁸⁷

The characteristic features of temporary marriage are the following. Like permanent marriage (*nikāḥ al-dā'im*), temporary marriage is contracted using the contractual model of offer and acceptance.¹⁸⁸ But different from a permanent marriage, this contract includes the specification of a period of time for which the couple will be married.¹⁸⁹ Further, while the mentioning of *mahr* (brideprice) is optional in case of a permanent marriage, it must be specified as part of the *mut^ca* contract.¹⁹⁰ As in the case of permanent marriage, *mahr* becomes payable upon consummation of the marriage (*dukūl*). A temporary marriage can be contracted without the presence of witnesses.¹⁹¹ Whether, however, the woman must be represented by a *walīy* is a

¹⁸⁵Hilli, *Idāḥ*, vol.3, pp.126-134; 'Amali, *Al-Lum^ca*, p.168; Haeri, *Law of Desire*, pp.49-60.

¹⁸⁶Y.Bellefonds, *Traité*, vol.2, p.86.

¹⁸⁷S.Haeri, *Law of Desire*, p.50.

¹⁸⁸Hilli, *Idāḥ*, vol.3, p.126

¹⁸⁹Hilli, *Idāḥ*, vol.3, p.128; such as, for example, a few hours, a day or one hundred years.

¹⁹⁰Hilli, *Idāḥ*, vol.3, p.127.

¹⁹¹like a permanent marriage in Shi'i law.

much disputed - and unresolved - question in Shi'i law, concerning both permanent and temporary marriage.¹⁹² Another noteworthy difference between permanent and temporary marriage is that while the number of permanent wives is limited to four, a man can simultaneously contract temporary marriage with as many women as he wants, even in addition to his four permanent wives.¹⁹³

A marriage contract entails rights and obligations for both husband and wife. In a contract of temporary marriage, these are minimal. The husband gains the right of sexual enjoyment of the woman in return for the payment of *mahr*. Unless stipulated, the *mut'ā* wife is not entitled to any financial support (*nafaqa*), not even in pregnancy. By the same token, the degree of obedience she owes her husband is far more limited than in a permanent marriage.¹⁹⁴ In further contrast to permanent marriage, husband and wife in a temporary marriage do not inherit from each other, unless it is stipulated in the contract.¹⁹⁵ Islamic law disapproves of the inclusion of conditions in a permanent marriage contract, seen as human interference with the established aims of the *šari'ā*.¹⁹⁶ In a temporary marriage contract, however, the couple is allowed to insert a number of conditions, so as to make the marriage suit their personal preferences and circumstances. Not only can the couple agree on whether the woman should receive maintenance payment or not, and on whether they inherit from each other or not, they can also determine, for example, when and how often sexual intercourse should take place.¹⁹⁷

The jurists specifically mention the husband's right to practice coitus interruptus (*'azl*) in a temporary marriage¹⁹⁸, a right which, in permanent marriage, can be, at least according to some jurists, contingent on the woman's consent.¹⁹⁹ Nevertheless,

¹⁹²S.Haeri, *Law of Desire*, p. 39; according to Hilli, the prevalent opinion (*al-aqwā*) is that the mentally competent adult woman does not need a *waliy*. (*Idāh*, vol.3, p.129).

¹⁹³S.Haeri, *Law of Desire*, p.2.

¹⁹⁴S.Haeri, *Law of Desire*, p.59.

¹⁹⁵'Amali, *Āl-Lum'ā*, p.168.

¹⁹⁶Y.Bellefonds, *Traité*, vol.2, pp.89-91; Mughniyyah, *Marriage* Part 1, p.55; a notable exception is Hanbali law, which permits the woman to include certain conditions in the marriage contract, which, should the husband fail to observe them, can provide legal cause for the annulment of the marriage (Ibn Qudama, *Āl-Muḡnī*, vol.6, p.548).

¹⁹⁷'Amali, *Āl-Lum'ā*, p.168; Hilli, *Idāh*, vol.3, p.130.

¹⁹⁸Hilli, *Idāh*, vol.3, pp.130-1.

¹⁹⁹see, for example, Ghazali, *Iḥyā'*, vol.2, p.51.

children born into or as a result of a temporary marriage are recognized as legitimate.²⁰⁰ At the same time, however, it is far easier for a temporary husband than for a permanent husband to deny fatherhood. His claim that the child is not his is accepted at face value, and he cannot be asked to go through the process of *li'ān* to substantiate it, as would be the case in a permanent marriage.²⁰¹

By definition, temporary marriage ends upon expiry of the mutually agreed time. However, it can also be dissolved prior to that moment through the dismissal of the wife by her temporary husband. This is called *hibat al-mudda*²⁰², "gift of the remaining time".²⁰³ The husband can terminate a *mut'ā* marriage at any time²⁰⁴, and does not need the presence of witnesses. In contrast to permanent marriage, the termination of a *mut'ā* contract is always irrevocable. The woman has no legal right to end a temporary marriage, unless her husband is a lunatic. She can, however, leave her husband or refuse sexual contact, but must then compensate him financially for failing to abide by the terms of the contract (ie. her sexual availability).

The waiting period of a *mut'ā* wife is shorter than that of a permanent wife²⁰⁵, and the *mut'ā* wife does not, during this time, receive any financial support.

Classical Shi'i jurists have referred to temporary marriage as a contract of lease. "Structurally a temporary marriage is exactly like the lease of people".²⁰⁶ In this agreement, the woman is the object of lease, the *musta'jara*, and the husband the lessee. The specification of a time limit as well as the price owed to the woman are the clearest reminders that one is dealing with a temporary exchange of service for money. Shi'i jurists themselves speak of the "strong[] commercial aspect of temporary marriage".²⁰⁷

²⁰⁰Amali, *Al-Lum'a*, p. 168; S.Haeri, *Law of Desire*, p.2, p.55.

²⁰¹Hilli, *Idāh*, vol.3, p.131; S.Haeri, *Law of Desire*, p.2, p.55.

²⁰²Amali, *Al-Lum'a*, p. 168.

²⁰³S.Haeri, *Law of Desire*, p.56.

²⁰⁴ie. regardless of whether the wife is observing a period of purity or whether she is menstruating. In a permanent marriage, divorce must only be pronounced during the wife's period of purity.

²⁰⁵if for a cause other than death of the husband: two menstrual cycles instead of three for women who menstruate, or 45 days, instead of three months, for those who do not. The *'idda* to be observed after the husband's death is four months and ten days, regardless of whether the marriage was temporary or permanent. 'Amali, *Al-Lum'a*, p.168.

²⁰⁶S.Haeri, *Law of Desire*, p.53.

²⁰⁷ibid., p.65.

THE EFFECTS OF POLYGAMY- DIVISION OF NIGHTS (*QISM*) IN A POLYGAMOUS MARRIAGE²⁰⁸

A man married to more than one woman is admonished by the law to treat his wives equally. In particular, he should spend an equal number of nights with each of them.²⁰⁹ He is, however, not obliged to have sexual intercourse with the woman he is spending the night with, in recognition of the fact that sexual desire can not be regulated in this manner. Ghazali quoted the Prophet, who said: "O God! This is the effort I make concerning matters under my control (ie. equal partition of nights); but I have no power over something that you control and I do not (meaning affection)."²¹⁰

Newly-wed women are allowed several nights with their new husband - seven nights for a virgin (*bikr*), and three nights for a non-virgin (*tayyib*) - before they join the rotation system.²¹¹ A wife can also grant her nights to a co-wife, provided she has her husband's consent.²¹² If the man wants to travel, and can only take one of his wives along with him, he should follow the example of the Prophet and cast lots between them. All schools recommend this; according to Shafi'i and Imamiyyah law, he must cast lots between his wives or , upon his return, make up the nights lost by those who stayed at home.²¹³

²⁰⁸The rules concerning division of nights are recommendations; their non-observance does not have any legal consequences. Unequal treatment in this area of marital relations is not even recognized as a reason for a woman to demand the annulment of her marriage. (Y.Bellefonds, *Traité*, vol.2, p.285).

²⁰⁹All schools except the Maliki school distinguish between free and slave wives: a free wife is entitled to twice the number of nights allocated to a slave wife. The Hanafi and the Imamiyyah school make a further distinction between a Muslim and a non-Muslim wife: the Muslima is entitled to twice the number of nights allocated to the non-Muslim wife. (Ibn Qudama, *Al-Muḡnī*, vol.7, p.35 (pp.29-30); Ghazali, *Al-Wajīz*, vol.2, p.38; Marghinani, *The Hedaya*, pp.66-67; Khalil bn Ishaq al-Jundi, *Précis*, p.503; 'Amali, *Al-Lum'ā*, p.173).

²¹⁰Ghazali, *Iḥyā'*, vol.2, pp.48-9; In the *Wajīz*, Ghazali states explicitly that the husband spends the night with his wife for the sake of intimacy, not necessarily to have intercourse with her. For that reason, a man must include in his rotation system women who are sick, sterile, menstruating, in childbed or in the state of ritual consecration (*iḥrām*). *Al-Wajīz*, vol.2, pp. 36-7.

²¹¹'Amali, *Al-Lum'ā*, p.173; Khalil bn Ishaq al-Jundi, *Précis*, p.505; Marghinani, *The Hedaya*, p.67; Ghazali, *Al-Wajīz*, vol.2, p.38; Ibn Qudama, *Al-Muḡnī*, vol.7, p.43 f.

²¹²Ghazali, *Iḥyā'*, vol.2, pp. 48-9; 'Amali, *Al-Lum'ā*, p.173; Khalil bn Ishaq al-Jundi, *Précis*, p.508; Marghinani, *The Hedaya*, p.67; Ghazali, *Al-Wajīz*, vol.2, p.39; Ibn Qudama, *Al-Muḡnī*, vol.7, p.38.

²¹³Ghazali, *Iḥyā'*, vol.2, p. 48; Marghinani, *The Hedaya*, p.67; Ibn Qudama, *Al-Muḡnī*, vol.7, p.27, p.31, p.40 f.; Khalil bn Ishaq al-Jundi, *Précis*, p.509; Ghazali, *Al-Wajīz*, vol.2, pp.39-40; Hilli, , vol.3, pp.254-56.

CHAPTER FOUR: THE IDEAL MARRIAGE

Both Makki and Ghazali gave advice on the practicalities of marriage. In Ghazali's *Kitāb ādāb al-nikāḥ*, the greater part of this advice appears in Chapter Three: "The Conduct of Married Life".¹ Most of the advice is based partly on the law, partly on received knowledge in the form of Prophetic *ḥadīth* and traditions from early Muslims. Presumably, the *ḥadīth* and traditions selected by both authors are only part of an abundant supply of material on marriage which was available in the culture. Nevertheless, Ghazali's choice of subjects is almost identical with Makki's. Both authors give advice on the choice of bride and groom² and list and describe the mutual rights and obligations of husband and wife³, such as authority and obedience, maintenance payments (*nafaqa*), sexual intercourse and divorce. The following analysis of the two texts focuses on the similarities between them, revealing the extent to which Ghazali relied on Makki's text.⁴

PERSONAL QUALITIES OF HUSBAND AND WIFE:

Ghazali and Makki portrayed the ideal husband and the ideal wife. They recommended that bride and groom be chosen with these ideals in mind if the marriage was to be harmonious and serve its purposes.⁵ Their comments on this subject are largely based on Prophetic *ḥadīth* and other traditions. Ghazali copied, mostly verbatim, almost all the traditions which Makki had gathered on the subject, and he agreed with Makki on the criteria which distinguish a good from a bad spouse: the ideal wife is pious, righteous, intelligent and moderate, has a good temperament, is beautiful, loves her husband and enjoys sex.⁶ Ghazali added that one should choose a virgin from a good family whose generally good health promises that she will bear children. Both authors also agreed that

¹Ghazali, *Iḥyāʾ*, vol.2, p.42.

²In Ghazali's text, which is divided into chapters, this advice occurs in "Chapter Two: The Marriage Contract, and conditions and qualities of the ideal bride". Ghazali, *Iḥyāʾ*, vol.2, pp. 36-41.

³in Chapter Three: "The Conduct of Married Life." Ghazali, *Iḥyāʾ*, vol.2, pp.42-60.

⁴The analysis of the two texts follows the structure of Ghazali's *Kitāb ādāb al-nikāḥ*, for the simple reason that the structure of Ghazali's text is easier to discern than the structure of Makki's text.

⁵Ghazali, *Iḥyāʾ*, vol.2, p. 38, p.41; Makki, *Qūt al-qulūb*, vol.2, p.249, p.250.

⁶Ghazali, *Iḥyāʾ*, vol.2, pp. 37-41; Makki, *Qūt al-qulūb*, vol.2, pp. 243-4, pp.249-51, pp.255-6.

to be a good husband, a man must not be a heretic, a sinner (*fāsiq*), a tyrant, or an alcoholic.⁷ Makki also included the usurer (*ākil al-ribā*)⁸, which Ghazali omitted. Ghazali in turn added that the groom should not be ugly, someone with a bad character or weak religious principles, or someone of inferior descent or someone who might be unable to fulfil his obligations to his wife ([*man*] *qaṣara ʿan al-qiyām biḥaqqiha*).⁹

ON CONJUGAL LIFE:

Both authors gave advice on the dynamics of the marital relationship. In both texts, this section contains many traditions from the Prophet describing proper marital relations. Often the Prophet's behaviour towards his wives is presented as an example.

Islamic law defines the rights and duties of each spouse clearly. The husband is responsible for his wife's financial support (*nafaqa*), as well as her religious instructions and moral conduct. His duty towards his wife, but also towards his children, has been compared to that of a shepherd towards his flock. He is responsible for the material well-being of his dependants, but also for the improvement of their character and for their religious guidance.¹⁰ The Quran says: "Ward off from yourselves and your families a Fire."¹¹ Women are frequently mentioned together with children¹², because, like children, they are portrayed as incapable of looking after themselves and of acting in their own best interest.¹³ This perception of the male-female relationship burdens the husband with many obligations, but it also invests him with a great degree of authority. The man decides what is good for himself and his wife, and her primary duty in marriage is obedience.¹⁴

⁷Ghazali, *Iḥyāʾ*, vol.2, p.41; Makki, *Qūt al-qulūb*, vol.2, p. 250.

⁸Makki, *Qūt al-qulūb*, vol.2, p.250.

⁹Ghazali, *Iḥyāʾ*, vol.2, p.41.

¹⁰Ghazali, *Iḥyāʾ*, vol.2, p.31, p.48; Makki, *Qūt al-qulūb*, vol.2, p.251.

¹¹M.Pickthall, *The Glorious Koran*, Sura 66, Verse 6. Ghazali, *Iḥyāʾ*, vol.2, p.34, p.48; Makki, *Qūt al-qulūb*, vol.2, p.251.

¹²eg. Ghazali, *Iḥyāʾ*, vol.2, p.33; Makki, *Qūt al-qulūb*, vol.2, p.251.

¹³see Ghazali, *Iḥyāʾ*, vol.2, pp.45-47 "Control of Jealousy", p.48 "To know and teach her personal religious obligations".

¹⁴Ghazali, *Iḥyāʾ*, vol.2, p.56.

Upon entering marriage, the woman must surrender to her husband, for the law grants her practically no scope to make independent decisions. She needs her husband's permission, whether she wants to distribute food to the poor, or to leave the house on an errand. She is entirely at his mercy: he can confine her to the marital home, chastise her in case of disobedience and divorce her at will. Makki and Ghazali quoted many traditions exhorting the husband not to abuse his power, but to always keep his wife's best interest in mind. Traditions also advise the husband to be guided by the principle of moderation (*i^ctidāl*) in his dealings with his wife, telling him to neither abuse nor neglect his influence.¹⁵ Both Makki and Ghazali included these traditions in their description of optimal marital relations. Ghazali, however, went further in elaborating the message of the traditions and emphasized the need for moderation. At the beginning of the chapter, he explicitly stated that the husband must "observe moderation"¹⁶ in all his dealings with his wife, and he repeated this exhortation several times throughout the chapter.¹⁷

The proper use of authority is a sign of good manners (*adab*). Makki and Ghazali agreed on ten aspects of married life in which the husband had to be careful to observe good manners: i) the wedding banquet (*walīma*), ii) kind treatment (*mu^cāšara*), iii) amusement (*du^cāba*), iv) authority (*siyāsa*), v) jealousy (*ḡaira*), vi) maintenance (*naḡaqa*), vii) instruction (*ta^clīm*), viii) division of time (*qism*), ix) marital discord (*nušūz*), x) sexual intercourse (*wiqā^c*). Ghazali added that a man must also know what to do in case of childbirth (*wilāda*).

¹⁵In the section on jealousy, for example, the need for moderation is strongly emphasized. Ghazali, *Iḥyā^ʿ*, vol.2, pp.45-7; Makki, *Qūt al-qulūb*, vol.2, p.253.

¹⁶Ghazali, *Iḥyā^ʿ*, vol.2, p.42.

¹⁷Ghazali, *Iḥyā^ʿ*, vol.2, p.44: "rather, he should observe moderation"; p.45: "it is on equilibrium that heaven and earth are based.[] And so it is necessary for you to observe moderation in opposing and agreeing"; p.45 "the fifth sign of good mannerṣ is to be moderately jealous."

Why is authority distributed so unevenly in an Islamic marriage? Makki and Ghazali gave two reasons. First of all, God put men "in charge (*qawwāmīn*) of women"¹⁸, and called the husband his wife's master.¹⁹ This divine order must not be altered.²⁰

Secondly, Quran and traditions reveal strong fears of the powers of female sexuality. The Quran prohibits sexual intercourse outside marriage or concubinage²¹, and the Islamic social order is based on legitimate descent. Women were portrayed as posing the greatest threat to this order and to obedience of God's command, since the mere sight of them was believed to tempt men into fornication (ie. illicit sex). The Prophet is reported to have said: "Even the least endowed with reason and religion among you women can defeat the best of men." "And this," Ghazali added, "is so only because of the arousal of sexual desire."²² Elsewhere in the *Iḥyāʾ*, Ghazali reported the Prophetic tradition "The worst temptation (*fitna*) I have left behind for men are women."²³ Women were also referred to as the tools of the devil, based on the belief that the devil uses them to tempt men to disobey God's command to abstain from fornication. The Prophet is reported to have said: "Women are the ropes of Satan"²⁴ and the devil himself described women as "one half of his army".²⁵

One obvious way to prevent women from disrupting the social order is to keep them out of men's sight, through seclusion and veiling. Basically, women should have as little contact as possible with men other than their husbands and close male relatives. The Prophet is reported to have asked his daughter Fatima: "What is best for a woman?" And she answered: "For her not to see a man and for no man to see her." The Prophet embraced her and said: "That is my daughter!"²⁶ A woman should not leave her house unnecessarily; if she has to go out, she must do so only with her husband's

¹⁸M.Pickthall, *The Glorious Koran*, Sura 4, Verse 34: "Men are in charge of women, because Allah hath made the one of them to excel the other..."; Ghazali, *Iḥyāʾ* vol.2, p.45.

¹⁹when He said (12:25):"They met her lord and master at the door." Ghazali, *Iḥyāʾ*, vol.2, p.45; Makki, *Qūt al-qulūb*, vol.2, p.255.

²⁰Ghazali, *Iḥyāʾ*, vol.2, p.45; Makki, *Qūt al-qulūb*, vol.2, pp.254-5.

²¹The punishment prescribed for fornicators in the Quran is one hundred lashes: M.Pickthall, *The Glorious Koran*, Sura 24, Verse 2.

²²Ghazali, *Iḥyāʾ*, vol.2, p.28

²³Ghazali, *Iḥyāʾ*, vol.3, p.102.

²⁴ibid., p.100.

²⁵ibid., p.100.

²⁶Ghazali, *Iḥyāʾ*, vol.2, p.46; Makki, *Qūt al-qulūb*, vol.2, p.253.

permission.²⁷ According to a tradition: "If [a woman goes out without her husband's permission] the Angels curse her until she returns home or repents."²⁸

The husband is responsible for his wife's movements outside the home, for it is feared that women can not be trusted to restrain themselves. It was believed that women's natural tendency was to go out in beautiful clothes²⁹, for the sake of distraction and other trivial things³⁰, like going and chatting to the neighbours.³¹ For that reason, it was considered one of the woman's first duties not to go out without her husband's permission³², but to trust his judgement and obey his decisions concerning her movements outside the home.

The responsibilities of the husband:

Financial obligations: *nafaqa* and *walīma*

The woman depends on her husband for financial support. Makki and Ghazali quoted several traditions which stress the merit of supporting one's wife generously. The Prophet is reported to have said: "The best among you is the one who treats his wife best."³³ Ghazali added that, while support should not be too little, it should also not be too much. He said: "[A] sign of good manners is moderation with regard to women's maintenance. A man should neither be stingy nor extravagant, but rather adopt a middle course."³⁴

The husband was also encouraged to give a wedding banquet to celebrate and publicize the marriage.³⁵

Ideal behaviour

Makki and Ghazali agreed that a man's behaviour towards his wife should ideally consist of kindness, tolerance and playfulness mixed with firmness, authority and

²⁷Ghazali, *Iḥyāʾ*, vol.2, p.47; Makki, *Qūt al-qulūb*, p.253.

²⁸Ghazali, *Iḥyāʾ*, vol.2, p.57; Makki, *Qūt al-qulūb*, vol.2, p.252 (slight variation).

²⁹Umar is reported to have said: "Deprive women of fancy clothes, because then they are forced to stay hidden at home." Ghazali explained: "He said this because women have no desire to leave their houses in shabby attire." Ghazali, *Iḥyāʾ*, vol.2, pp.46-7; Makki, *Qūt al-qulūb*, vol.2, p.253.

³⁰Ghazali, *Iḥyāʾ*, vol.2, p.47.

³¹Ghazali, *Iḥyāʾ*, vol.2, p.59.

³²Ghazali, *Iḥyāʾ*, vol.2, pp.56-60, "The Responsibilities of the Wife"; Makki, *Qūt al-qulūb*, vol.2, p.252.

³³Ghazali, *Iḥyāʾ*, vol.2, p.47; Makki, *Qūt al-qulūb*, vol.2, p.252.

³⁴Ghazali, *Iḥyāʾ*, vol.2, p.47.

³⁵Ghazali, *Iḥyāʾ*, vol.2, p. 42; Makki, *Qūt al-qulūb*, vol.2, p.249.

vigilance. Both portrayed this ideal treatment of the wife as a difficult and exacting task. First of all, a man had to make a general effort to treat his wife well. "[But] know", Ghazali said," that to treat her well means not only protecting her from trouble, but also bearing the trouble that she causes, and remaining patient in the face of her thoughtlessness and her anger."³⁶ Makki and Ghazali quoted many traditions in which the Prophet is described as the model husband- kind, tolerant and patient, even when "his wives were contradicting him" and treating him disrespectfully.³⁷

Secondly, Ghazali continued, "the man should not just patiently bear the trouble [caused by his wife]; he should also play, joke and have fun with her, because it makes her happy."³⁸ According to a tradition, "an intelligent man should behave like a young boy when he is [Makki: in his house and] with his family; but if he is among people, he should be found a man."³⁹ Again, the example of the Prophet is quoted: Makki and Ghazali related that he used to joke and be merry with his wives.⁴⁰ Nevertheless, the man should not go "so far in joking with his wife, treating her with kindness and complying with her wishes that he spoils her and she loses all respect for him."⁴¹

A husband is responsible for the proper conduct of his wife - it is his duty to watch her and to correct her if she behaves inappropriately. He can only do so if she respects and obeys him. Many traditions therefore condemn the man who loses authority to his wife. The Prophet is reported to have said: "Perish the slave of his wife!"⁴² and Hasan al-Basri warned that: "God throws into the Fire any man who complies with his wife's wishes."⁴³ Umar went so far as to say "Oppose women - it is a blessing!"⁴⁴ Ghazali explained that since men have been put in charge of women, a man who hands over

³⁶Ghazali, *Iḥyāʾ*, vol.2, p.43.

³⁷Ghazali, *Iḥyāʾ*, vol.2, pp.42-3; Makki, *Qūt al-qulūb*, vol.2, p.253, p.254.

³⁸Ghazali, *Iḥyāʾ*, vol.2, p.44; lit.: because it makes the hearts of women happy.

³⁹Ghazali, *Iḥyāʾ*, vol.2, p.44, Makki, *Qūt al-qulūb*, vol.2, p.253.

⁴⁰Ghazali, *Iḥyāʾ*, vol.2, p.44; Makki, *Qūt al-qulūb*, vol.2, p.253.

⁴¹Ghazali, *Iḥyāʾ*, vol.2, p.44.

⁴²Ghazali, *Iḥyāʾ*, vol.2, p.44; Makki, *Qūt al-qulūb*, vol.2, p.255.

⁴³Ghazali, *Iḥyāʾ*, vol.2, p.44; Makki, *Qūt al-qulūb*, vol.2, p.238

⁴⁴Ghazali, *Iḥyāʾ*, vol.2, p.44.

authority to his wife fulfils the Satanic prophecy mentioned in the Quran: "and surely I will command them and they will change Allah's creation."⁴⁵

Women were portrayed as crafty, usurping their husbands' authority slowly and stealthily. For that reason, a man had to be careful not to overlook the first signs of his authority being undermined. Makki and Ghazali quoted the following tradition "Bedouin (*ʿarab*) women used to teach their daughters how to put their husbands to the test. The woman would say to her daughter [Makki: before the wedding]: 'My daughter, test your husband before you take liberties with him: remove his spearhead; if he says nothing, cut meat on his shield; if he still says nothing, use his sword to cut bones, and if he still does not object, fasten a saddle on his back and mount him because he is your donkey!'"⁴⁶

Generally, if the woman disobeys her husband, "he has the right to discipline her and force her into obedience."⁴⁷ Both Makki and Ghazali advised the man to proceed in stages: "at first, he should admonish and caution her. If that brings no results, he should turn his back on her in bed, or let her sleep alone, and avoid her around the house for up to three days. If that shows no effect on her, he should beat her, but not violently, so that he causes her pain but does not break a bone or make her body bleed. He should not strike her face, because that is forbidden."⁴⁸

In cases where marital discord is not caused by the wife's disobedience, but by other factors, the couple is advised to seek reconciliation with the help of two arbiters, "one from her family, and one from his."⁴⁹

Jealousy

An important part of the husband's duty as guardian of his wife is to control her contacts with other men, which should be kept to an absolute minimum. Ghazali called this duty *ḡaira*, which can be translated as jealousy, or vigilance. But both Makki and

⁴⁵Ghazali, *Iḥyāʾ*, vol.2, p.45; Makki, *Qūt al-qulūb*, vol.2, p.255; M.Pickthall, *The Glorious Koran*, Sura 4, Verse 119.

⁴⁶Ghazali, *Iḥyāʾ*, vol.2, p.45; Makki, *Qūt al-qulūb*, vol.2, p.255 (slight variations, same story).

⁴⁷Ghazali, *Iḥyāʾ*, vol.2, p.49; the woman's refusal to pray is considered a reason for chastisement.

⁴⁸Ghazali, *Iḥyāʾ*, vol.2, p.49; Makki, *Qūt al-qulūb*, vol.2, p.252; the exact quote is from the *Iḥyāʾ*, but content and meaning of the passage is the same in both texts.

⁴⁹Ghazali, *Iḥyāʾ*, vol.2, p.49; Makki, *Qūt al-qulūb*, vol.2, p.254.

Ghazali stressed that a man must observe moderation with regard to jealousy. Ghazali said: "[]One should neither ignore the first signs of matters that could have dreadful consequences, nor should one be too suspicious, and go too far in harassing the woman and spying into her secret affairs."⁵⁰ Makki said: "By my life, there is a limit to jealousy; if the man passes beyond it, he fails to accomplish his duty and exceeds his right."⁵¹ Several traditions mentioned by Makki and Ghazali express the same notion. The Prophet is reported to have said: "There is one form of jealousy God hates, and that is a man's unfounded jealousy of his wife."⁵² and 'Ali added: "Do not be too jealous of your wife, otherwise she will be accused of doing evil through your instigations."⁵³

Instruction

The husband is responsible for his wife's religious instruction. Makki and Ghazali mentioned the husband's duty to teach his wife the rules of the orthodox Islamic prayer ritual (*ṣalāh*) and other religious duties, as well as the Sunni articles of faith.⁵⁴ In addition, a woman must be taught the special rules of menstruation and irregular bleeding - during times of blood loss, a woman neither prays nor fasts, but some of the prayers she misses must be made up later.⁵⁵ If the husband is able to teach his wife all that she needs to know, she has no right to go out and consult the religious scholars. If, however, his knowledge is inadequate, it is her duty to go out and inform herself.

Sexual intercourse

Sexual intercourse is one of the most important aspects of marital life. The husband can demand sexual availability from his wife at any time. If she refuses him, he has the right to stop maintenance payment (*nafaqa*) until she makes herself available again.⁵⁶ The woman, in turn, cannot demand sexual intercourse from her husband in the way

⁵⁰Ghazali, *Iḥyāʾ*, vol.2, p.45.

⁵¹Makki, *Qūt al-qulūb*, vol.2, p.253.

⁵²Ghazali, *Iḥyāʾ*, vol.2, p.46; Makki, *Qūt al-qulūb*, vol.2, p.253 (very slight variations, but same tradition).

⁵³Ghazali, *Iḥyāʾ*, vol.2, p.46; Makki, *Qūt al-qulūb*, vol.2, p.253.

⁵⁴Ghazali, *Iḥyāʾ*, vol.2, p.48; Makki, *Qūt al-qulūb*, vol.2, p.251.

⁵⁵Ghazali explains "Whenever the woman's flow of blood stops so shortly before the sunset prayer that the intervening time is just enough to perform one *rakʿa*, then she has to make up the midday and afternoon prayer. And if the bleeding stops the length of one *rakʿa* before the morning prayer, then she must make up the sunset prayer and the evening prayer. Ghazali, *Iḥyāʾ*, vol.2, p.48.

⁵⁶see chapter on the laws of marriage and divorce, "Maintenance".

that he can demand it from her. Nevertheless, it is his duty, as her husband and moral guardian, to satisfy her and protect her against the sin of fornication. Makki and Ghazali advised the husband to adjust the frequency of sexual intercourse "to what she needs to stay virtuous, because the protection of her virtue is his duty."⁵⁷ As a general rule, both Makki and Ghazali recommended that a man sleep with his wife once in four nights. "This", Ghazali said, "would be the fairest thing to do if he had four wives, therefore it is the longest permitted interval."⁵⁸

Both authors also stressed how important it is for the husband to allow his wife to climax if he wants to give her sexual satisfaction and ensure marital harmony. They took into consideration that the female climax takes longer to develop than the male, and considered it the man's responsibility to ensure that the woman was not deprived of her sexual fulfilment through premature ejaculation. This, they knew, could cause dislike. They recommended that the couple aim for simultaneous orgasm, but considered it a male duty to observe the stages of female arousal and to pace himself accordingly. Ghazali further added: "Let the man first talk to the woman in affectionate terms and kiss her before he has intercourse with her. The Prophet said: 'Let none of you have intercourse with his wife like an animal, and let there be messengers between them.' (meaning kisses and words)."⁵⁹

The husband must be informed about the etiquette of sexual intercourse. Makki and Ghazali advised the man to begin with invocations of God's name.⁶⁰ Ghazali said: "It is recommended that he begin by mentioning God's name and to recite: 'Say: He is Allah, the One'⁶¹. This should be followed by 'God is great' and 'there is no God but Allah'. Then he should say: 'In the name of God the Most High, the Mighty. O God, if you have decreed that offspring should proceed from my loins, make it good offspring.'"⁶² Further, the couple should "turn away from the direction of Mekka, and

⁵⁷Ghazali, *Iḥyāʾ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.246: Makki expresses the same idea in slightly different words.

⁵⁸Ghazali, *Iḥyāʾ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.246: Makki expresses the same idea slightly differently. (Makki's text has "once in three nights", but the context shows clearly that this is a misprint).

⁵⁹Ghazali, *Iḥyāʾ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.258.

⁶⁰Ghazali, *Iḥyāʾ*, vol.2, p.49; Makki, *Qūt al-qulūb*, vol.2, p.243.

⁶¹M.Pickthall, *The Glorious Koran*, Sura 112, Verse 1.

⁶²Ghazali, *Iḥyāʾ*, vol.2, p.49.

not face it during intercourse, out of deference for the *qibla*⁶³." ⁶⁴ Intercourse is disapproved of on three nights of the month, the first, the one in the middle and the last, but encouraged on Fridays.⁶⁵ Finally, for the sake of decency, both husband and wife should cover themselves with a garment and lower their voices.⁶⁶

An important aspect of sex are the rules of ritual purity. Sexual intercourse puts men and women in a state of major ritual impurity (*janāba*), which requires washing of the whole body (*ḡusl*). Makki and Ghazali disapproved of going to sleep in a state of major ritual impurity. Makki explained: "The spirits ascend to the Throne, and those who are clean are allowed to prostrate themselves, while those who are ritually unclean are not allowed to do so."⁶⁷ In order to avoid going to sleep in a state of impurity, one should refrain from sexual intercourse at the beginning of the night.⁶⁸ A person should also not eat or drink while in a state of major ritual impurity unless he has first performed the ritual ablutions of prayer (*wuḍūʿ*).⁶⁹

The rules of purity also prescribe that a man wanting to sleep with his wife for a second time must wash his genitals first. Similarly, if he wants to perform intercourse after a nocturnal emission, he should either wash or urinate first.⁷⁰ Generally, nocturnal emissions in both men and women require ablutions. Makki ordered the husband to instruct his wife on this rule.⁷¹ Ghazali did not mention it.

Sexual intercourse with menstruating women is prohibited.⁷² Nevertheless, the husband can share the bed with his menstruating wife. She should, however, cover herself with a loincloth (*izār*).⁷³ Makki reported two legal opinions; according to one,

⁶³the direction of prayer.

⁶⁴Ghazali, *Iḥyāʿ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.257 (same instruction, expressed slightly differently).

⁶⁵ Ghazali, *Iḥyāʿ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.257.

⁶⁶ Ghazali, *Iḥyāʿ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.257.

⁶⁷Makki, *Qūt al-qulūb*, vol.2, p.257.

⁶⁸Ghazali, *Iḥyāʿ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.257. Further, a man should not shave, trim his nails, give blood or part with any other part of his body while in a state of major ritual impurity. Because all parts of the body will be returned to him in the afterlife, and he will become impure. Ghazali, *Iḥyāʿ*, vol.2, p.51; Makki, *Qūt al-qulūb*, vol.2, p.257.

⁶⁹Ghazali, *Iḥyāʿ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.257.

⁷⁰Ghazali, *Iḥyāʿ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2 p.257.

⁷¹Makki, *Qūt al-qulūb*, vol.2, p.258.

⁷²Based on the Quranic verse (2:222).

⁷³Makki: reaching from the navel to the middle of the thighs. Ghazali: reaching from her loins to just above her knees. Ghazali, *Iḥyāʿ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.258.

the husband can enjoy the body of his menstruating wife, except the area covered by the cloth. According to the second opinion, he can enjoy her entire body, including the parts covered by the cloth, with the exception of her genitals. Makki preferred the first opinion, Ghazali chose the second.⁷⁴ Both agreed, however, that there is no need for the husband to avoid his wife; he can eat with her, share the same bed with her and generally associate with her.⁷⁵

Both authors prohibited anal intercourse⁷⁶, but Ghazali gave the husband permission to use his wife's hand for masturbation.⁷⁷ As part of the section on sexual intercourse, both Makki and Ghazali discussed coitus interruptus (*ʿazl*), a method of contraception. However, while Makki "strongly disapproved of it", Ghazali permitted it.⁷⁸ How and why the two authors arrived at different conclusions will be discussed below.

Division of time⁷⁹

Makki and Ghazali agreed that a man who is not satisfied with one wife can, or even should, take more - up to four.⁸⁰ But if he does so, it is his duty to treat them all equally as far as possible. This means that he must divide his nights equally amongst them and distribute presents evenly. It does not mean, however, that he has to love them all equally, or grant them all the same sexual favours. Even the Prophet, who is held up as the exemplary polygamous husband, admitted that love is not subject to a man's own will.⁸¹ This section, which relies almost exclusively on traditions from and about the Prophet, is almost identical in both texts.⁸² It appeals to the husband's sense of justice, admonishing him not to favour one of his wives at the expense of another.

⁷⁴Ghazali, *Iḥyāʾ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.258.

⁷⁵Ghazali, *Iḥyāʾ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.258.

⁷⁶Ghazali, *Iḥyāʾ*, vol.2, p.50; Makki, *Qūt al-qulūb*, vol.2, p.258.

⁷⁷Ghazali, *Iḥyāʾ*, vol.2, p.50.

⁷⁸ Ghazali, *Iḥyāʾ*, vol.2, pp.51-3; Makki, *Qūt al-qulūb*, vol.2, p.256.

⁷⁹also see section on division of time (*qism*) in a polygamous marriage in the chapter on "Laws of marriage and divorce".

⁸⁰Ghazali, *Iḥyāʾ*, vol.2, p.30; Makki, *Qūt al-qulūb*, vol.2, p.244.

⁸¹Ghazali, *Iḥyāʾ*, vol.2, p.48; Makki, *Qūt al-qulūb*, vol.2, p.245.

⁸²Ghazali, *Iḥyāʾ*, vol.2, pp.48-49; Makki, *Qūt al-qulūb*, vol.2, pp.245-6.

CHAPTER FIVE: THE REACTION

The first chapter of this study looked in detail at the form and content of the first chapter of Ghazali's *Kitāb ādāb al-nikāḥ* ("The Case for and the Case against Marriage"), and argued that it was shaped to a large extent by the fact that it was a response to the earlier discussion of marriage in Makki's *Qūt al-qulūb*. But Ghazali's response to Makki's discussion of marriage was not restricted to the first chapter of the *Kitāb ādāb al-nikāḥ*. Many features of the *Kitāb ādāb al-nikāḥ* as a whole should be understood as reactions to issues raised by Makki. Ghazali reacted to Makki in a variety of ways, ranging from emphatically expressing a very different attitude (eg. towards sexuality and women), to directly responding to Makki's argument (eg. about contraception.), to consolidating into one section (as in the case of divorce) material which, in Makki's text, was distributed throughout¹.

ATTITUDES TOWARDS SEXUALITY

Behind the surface similarities between the texts of Ghazali and Makki, resulting from the identical nature of much of the material, there are profound differences in attitude regarding the function and place of sexuality in human life. Ghazali discussed marriage and celibacy within the pro-marriage and pro-sexuality context of orthodoxy, while Makki discussed the matter from the position of a Sufi ascetic.

Makki considered sexual desire to be one of the most serious obstacles to spiritual advancement. At the very least, it disturbs the believer's concentrated worship; but at worst, in order to be saved from the sin of masturbation or the crime of fornication, it might force him into marriage. Marriage, in turn, is a source of endless distractions and heavy moral and financial obligations. Makki was convinced that the height of the mystical experience is reserved for the solitary; therefore, he favoured the suppression of sexual desire, so that marriage could be avoided.

¹ Ghazali actually mentions divorce twice in the *Kitāb ādāb al-nikāḥ*. Nevertheless, the greater part of the statements on divorce, as well as the laws of divorce, are summarized in one section. (Ghazali, *Iḥyāʾ*², vol. 2, pp.55-6).

Makki was aware of the dangers of unfulfilled sexual desire. He shared the general fear of fornication and said: "For someone who fears [] fornication [], marriage [] is better."² In addition, Makki was haunted by a "monkish" fear of masturbation. He recommended celibacy only for someone who is accustomed to chastity and not tempted into sin, who does not lose concentration and his dedication to worship because his mind is crowded with thoughts of women, who does not look at what is forbidden and whose meditation is not disturbed by desire overcoming him.³ Because "the genitals sin for the first time when phantasies (*musāmarat al-fikr*) arouse desire. This, in a sense, is a preamble. The second sin takes place when desire leads to the sensation of sexual excitement in the genitals. This, in fact, is an action. The third sin takes place when the man stimulates himself manually. And the fourth sin takes place when desire becomes apparent in the genitals, and he has an erection. To touch the genitals with the right hand is reprehensible."⁴ Makki explained that "when such things occur, it diminishes the heart and diverts it from worship (lit.humility toward God) (*tuḡaiyyiru al-qalb ʿan al-kuṣūʿ wa tadḡulu ʿalāhi al-naqṣān*)."⁵ In addition, "powerful traditions speak of aversion to and prohibition of masturbation"⁶ and "God destroyed a nation whose people were masturbating".⁷

According to Makki, marriage is an inferior option, needed only by those unable to control their sexual thoughts and actions. Compared to masturbation and fornication, marriage is the lesser evil, but it is certainly not to be sought for its own good.

When Ghazali discussed marriage, he did it with the firm conviction that human sexuality is basically good. He strongly disagreed with Makki's negative portrayal of sexual desire, which was the result, according to Ghazali, of Makki's failure to understand the purpose for which sexuality had originally been created. Ghazali placed sexuality in the largest possible context - that of God's creation and His plan for

²Makki, *Qūt al-qulūb*, vol.2, p.239.

³ibid., p.238.

⁴ibid.

⁵ibid.

⁶ibid., p.240.

⁷ibid.

mankind. Ghazali had asked questions such as these: why has God created mankind in possession of sexual desire? why did he create it as strong as it is? and what were human beings supposed to do with it? The answers to these questions about sexuality are so central to the discussion of marriage that Ghazali formulated them in the introduction to the *Kitāb ādāb al-nikāh*.⁸

Ghazali was convinced that God created sexual desire for men and women to make use of it. Within the first lines, he declared the ascetics' endeavour to suppress sexual desire, which constitutes an attempt at resisting the divine order, destined to fail:

"God's subtle acts of kindness towards humanity are neverending, whether they want this or not. Among his marvellous acts of benevolence are the creation of man from semen, [], and the forceful imposition of sexual desire, compelling mankind to procreate and guaranteeing the survival of their race, even against their will."⁹

Ghazali saw sexual desire as an essential element of the divine miracle of procreation. "Generation is the subject of some of the most eloquent passages of the Quran, as a compelling sign of God's majesty and power. In the light of the attention they have received [], the two most important passages are undoubtedly Sura xxii,4 and Sura xxiii, 12-14. The first is from the chapter of The Pilgrimage: 'Oh Mankind! If you are in doubt as to the Resurrection, [consider] that we have created you of earth; then of semen; then of a blood-like clot; then of a lump of flesh, [which is] formed or not formed; so that we may demonstrate to you [our power] etc.' The second is from the chapter of The Believers: 'We created man of a quintessence of clay. Then we placed him as semen in a firm receptacle. Then we formed the semen into a blood-like clot etc'."¹⁰

⁸"Praise be to God! The wonders of His creation are proof against the arrows of doubt, their uniqueness bewilders human minds. His subtle acts of kindness towards mankind are neverending, whether they want this or not. Among his marvellous acts of benevolence are the creation of mankind from semen, thus establishing among them ties of kinship and relationships by marriage, and the forceful imposition of sexual desire. Sexual desire compels mankind to procreate and guarantees the survival of their race, even against their will. God attached great importance to legitimate descent. He prohibited fornication and, as a strong deterrent, vehemently denounced it as disgraceful. Fornication became a monstrous crime and a very grave matter. Instead, God encouraged, recommended and ordered marriage." Ghazali, *Iḥyāʾ*, vol.2, p.21.

⁹Ghazali, *Iḥyāʾ*, vol.2, p.21.

¹⁰B.Musallam, *Sex and Society in Islam*, pp.53-54.

Insemination can only take place with the help of sexual desire. Ghazali spoke of the "forceful imposition of sexual desire, compelling mankind to procreate and guaranteeing the survival of their race, even against their will." This is the core of Ghazali's argument in favour of sex - his belief that God not only intentionally created human beings in possession of sexual desire, but that he also intended sexual desire to be one of the strongest and most irresistible of human desires. It is through the irresistible nature of sexual desire that human beings are forced to procreate and to perpetuate the existence of their own kind, thus fulfilling God's design. Human beings are lured into procreation with the help of sexual desire. "Sexual desire was created as a provoking incentive, responsible in the male for the emission of seed and in the female for acceptance of the fruit, luring the couple, with the help of sexual intercourse, into having a child, just like the scattering of tasty seeds lures the bird into the net."¹¹ On the one hand, God wants procreation and children, and therefore He created the incentive of sexual desire. On the other hand, human beings want sexual pleasure, and are thus lured into procreation by their sexual appetites.

For Ghazali, procreation constituted one of the wonders of God's creation (*ʿajāʾib ṣanʿihi*) and a manifestation of His kindness towards mankind (*laṭāʾif niʿamihi*). It is miracles of this kind which baffle human minds (*lā tarjīʿu al-ʿuqūl ʿan awāʾil badāʾiʿha illā wāliha ḥairā*), give proof of God's existence (*lā tuṣādifu sihām al-auhām fī ʿajāʾib ṣanʿihi majran*) and compel man to believe in the Creator. Sexual desire is an essential part of procreation - it is part of the miracle and a gift from God to mankind.

But procreation is only one of the marvellous functions of sexual desire. It is the only function Ghazali referred to in the introduction, but later on in the text he highlighted another aspect of sexual desire which provides an equally compelling reason for man to believe in the Maker. Ghazali argued that God created sexual pleasure so that mankind would have something tangible by which to anticipate the pleasures of Paradise: "By my life, apart from exerting pressure to procreate, sexual desire contains

¹¹Ghazali, *Iḥyāʾ*, vol.2, p.24.

another form of Wisdom: the pleasure experienced when sexual desire is satisfied. If this pleasure lasted, it would be stronger than all other pleasures and, as such, it acts as a harbinger of the pleasures promised in Paradise. Because there is no use in awakening a longing for pleasure that can not be tasted, which is why it would be useless to awaken in the impotent an interest in the pleasures of intercourse, or to tempt a young boy with the pleasures of power and rule. But one of the benefits of worldly pleasures is the hope of enjoying them permanently in Paradise, and this hope acts as an incentive for worship of God. [] Look at the Divine Wisdom, the Mercy and the Order, how It has placed two forms of life, an external [ie. procreation] and an internal [ie. the Afterlife], under this one desire. [] There is not a single particle in the human body, internally or externally, nor even in the entire Kingdom of Heaven and Earth that does not contain the subtleties and wonders of the Divine Wisdom which baffles human minds."¹²

All this does not, so far, explain the need for the institution of marriage. Ghazali explained that the need for the institution of marriage results from the fact that God determined marriage to be the only legitimate sexual relationship (with the exception of concubinage). Ghazali further argued that the strong dislike for fornication and illegitimate descent expressed in the Quran and in Prophetic traditions clearly indicate that sexual activity must be restricted to marriage. "God attached great importance to legitimate descent. For that reason, He strongly prohibited fornication [], which became a terrible crime. Instead, God [ordered people to marry]."¹³

Makki and Ghazali were motivated by very different concerns when writing on marriage. Makki wrote in defence of celibacy, while Ghazali's aim was primarily to reconcile the Sufi and the orthodox views on marriage. He did so by placing the discussion of marriage in the context of God's purpose of sexuality. This allowed Ghazali to reject the suppression of sexuality practiced by the ascetics. At the same time, he took very seriously the ascetics' apprehensions about marriage, at least those

¹²ibid., pp.27-28.

¹³ibid., p.21.

based on non-sexual reasons, such as, for example, economics. Ghazali appropriated part of the ascetic argument when he said that a man should not only aim to have children and to satisfy his sexuality, but that he should also consider the consequences of family obligations, and then decide what, in his personal circumstances, gains him most credit with God.

ATTITUDES TOWARDS WOMEN

Makki's asceticism went hand in hand with profound misogyny. Ghazali, on the other hand, appreciated women as potentially helpful partners in the marital relationship. Their different arguments in favour of marriage and celibacy must also be seen in the context of very different attitudes towards women.

If we compare the writings of St. Augustine and Makki on marriage and celibacy, it appears as if Muslims had adopted the practice of celibacy, but not its Christian motivation. The Christian rejection of marriage was based on an extreme hostility to sexuality. St. Augustine vehemently denounced the satanic forces of lust. But there is nothing in Makki's writings to suggest a hostility to sexuality as such. Makki argued in favour of the suppression of sexual desire because he dislikes marriage, not the reverse. Makki's aversion to marriage appeared to be motivated by other factors: first of all, he was convinced that solitude provides optimal conditions for worship and spiritual exercise. Secondly, he was apprehensive about the moral and financial obligations of a father and husband. Thirdly, he feared women's bad influence on men and, finally, he despised money, which the family man must own to support his family. Of all these arguments, Makki's aversion to women seemed to be the most decisive. After he had stated his four arguments against marriage, Makki quoted several traditions to support them. Of these traditions, only two speak of the financial difficulties encountered by the family man, but eleven about problems with women.¹⁴

It could be that Makki considered it impossible, within the Muslim context, to reject marriage by condemning sexuality in the way Christian theologians had done. There is

¹⁴Makki, *Qūt al-qulūb*, vol.2, pp.238-9.

simply no basis in the Quran or the Prophetic traditions for such condemnation. However, Makki found some support for arguing that women had become less suitable as marital partners than they used to be, and that the value of marriage had to be reassessed on the basis of these changed circumstances. He argued that marriage used to be a good thing in the time of the Prophet, which is why he married so frequently, and encouraged his followers to follow his example. However, Makki explained, in the time of the Prophet women were much better - more pious, helpful and supportive, and less demanding. They had since changed dramatically for the worse, their morals had deteriorated as their demands had increased. Makki quoted a *ḥadīṭ* in which the Prophet said that "a time will come when a man will be destroyed by his wife, parents and children, who will reproach him for his poverty and demand of him what he is unable to provide. This will make him do things which violate his religious principles (*dīn*), and earn him eternal damnation (*fayahliku*)."¹⁵ Another *ḥadīṭ* says: "The best man after the second century will be the man with the light burden who has neither wife nor child."¹⁶

It is possible that Makki described women so unfavourably because they provided him with the least controversial argument against marriage. But it is equally possible that Makki's aversion to women really was his most important argument against marriage, for a dislike of women was widespread among early and later Sufis alike.¹⁷ Whatever his motivation, Makki throughout referred to women in the most derogatory and contemptuous terms, claiming, for example, that "most women are irreligious and unscrupulous (*qalilāt al-dīn wa al-salāḥ*), that "their most predominant characteristics are ignorance and caprice" and that "there is no good in them because they are whimsical and love the world".¹⁸

For Makki, there was only one positive contribution a woman could make to a man's life - she could give him sexual satisfaction. But Makki went even beyond

¹⁵ibid., p.239.

¹⁶ibid.

¹⁷A.Schimmel, *Mystical Dimensions of Islam*, pp.427-9. T.Andrae, *Islamische Mystik*, p.55.

¹⁸Makki, *Qūt al-qulūb*, vol.2, p.238.

reducing women to sex objects; he reduced them to inhuman, interchangeable commodities. In his explanation of the institution of polygamy, Makki compared women to animals and to shirts. He justified polygamy on the basis that some men need variety in their sex lives. Just as some people tire of riding the same kind of animal, some men tire of the same woman. And just as God created four different kinds of riding animals - donkeys, mules, horses and camels - he created the institution of polygamy, allowing men to change women as they would change their mount. Because just as the gaits of donkeys, mules, horses and camels differ, women differ in bed.

Why did God limit the number of wives to four at a time? Makki explained this number by quoting the reference in the Quran to four kinds of riding animals: "And horses and mules and asses (hath He created) that ye may ride them."¹⁹ and "and appointed for you ships and cattle whereupon ye ride."²⁰ which Makki interpreted as referring to the camel."²¹ Makki also quoted the Quranic verse: "They (your wives) are raiment (*libās*) for you"²² and explained that popular wisdom holds "that it is not excessive for a man to have four shirts at the same time, while any number exceeding four is deemed excessive."²³ The Quranic verse refers to the great intimacy between husband and wife: husband and wife cover and protect each other, they are as close to the other as the shirts on their backs. Makki belittled, ridiculed and abused this meaningful metaphor just as he belittled and ridiculed women throughout, as when he said: "By my life, a woman requires a great amount of gentle courtesy (*faḍli mudārātⁱⁿ*), high-minded wisdom (*laṭīfa min al-ḥikma*), excessive amounts of compassion (*ṭaraf min al-muwāsāh*), a whole chapter of kindness (*bāb min al-mulāṭafa*), a great amount of maintenance (*itisā^c saḍr li³l-nafaqa*), good temper (*husn al-ḳalq*) and nice words (*luṭf al-lafẓ*)."²⁴

¹⁹ibid., p.244; M.Pickthall, *The Glorious Koran*, Sura 16, Verse 8.

²⁰ M.Pickthall, *The Glorious Koran*, Sura 43, Verse 12.

²¹Makki, *Qūt al-qulūb*, vol.2, p.244.

²²M.Pickthall, *The Glorious Koran*, Sura 2, Verse 187.

²³Makki, *Qūt al-qulūb*, vol.2, p.245.

²⁴ibid., p. 247.

Ghazali was aware that Makki's low opinion of women was one of his strongest arguments against marriage. When Ghazali introduced his discussion of marriage and celibacy he referred to the two opposing factions as the ones who "have regarded marriage so highly that they maintained that it is even better than solitary devotion to God" and those who said that "in times like ours it is best to avoid marriage [altogether]. Marriage used to have its merit in the past, when earning a living was not perilous and women's morals not blameworthy."²⁵ But it is telling that while Ghazali incorporated the argument of economic deterioration in his own discussion, he completely dropped any mention of the deterioration in women's morals.²⁶

Ghazali's attitude to women can generally be described as sympathetic, appreciative and compassionate. He fully recognized the positive contributions a good wife could make to her husband's life - an aspect Makki ignored. Women feature prominently in Ghazali's pro-marriage arguments. The part women play in procreation and satisfaction of sexual need is obvious. Less obvious and therefore more remarkable are Ghazali's other three pro-marriage arguments²⁷, where he described women as helpful companions, aiding their husband's spiritual advancement.

CONTRACEPTION

In the context of giving advice on sexual intercourse, both Makki and Ghazali discussed contraception, or more specifically, coitus interruptus (*ʿazl*). Here, Ghazali's argument is a direct response to Makki's treatment of the issue, with which he totally disagreed, and provides one of the clearest proofs of the close relationship between the two texts.

For Makki, coitus interruptus constituted murder.²⁸ The statement which sums up Makki's position is the following remark, reportedly made by Ibn 'Abbas, that "coitus interruptus is minor infanticide (*al-mauʿūda al-ṣuḡrā*)."²⁹ Ibn Abbas was referring

²⁵Ghazali, *Iḥyāʾ*, vol.2, p.21.

²⁶Ghazali's arguments against marriage are three: Financial burden, Failure to fulfil moral responsibilities, and Distraction.

²⁷Companionship, Housekeeping and Training of the self.

²⁸In addition, it is a practice he associated with idolatry (*ṣirk*), which the Quran condemns as a "tremendous sin": M. Pickthall, *The Glorious Koran*, Sura 4, Verse 48. Makki said: "The practice of coitus interruptus contains an element of hidden idolatry (*daqīqa min al-ṣirk al-ḥafī*)".

²⁹Makki, *Qūt al-qulūb*, vol.2, p.256.

to the pre-Islamic custom of burying baby-girls alive (*waʿd*), and implying that coitus interruptus, by preventing a child from being born, amounts to the same thing: since both prevent a life from taking full shape, both have to be equated with murder.³⁰

Makki explained that, in generation, man is responsible for insemination, while God is responsible for the ultimate creation of a human being from the seed. A man who practices coitus interruptus does not fulfil his responsibility, "he does not do that which would produce a child."³¹ As a result, "he is charged with the child's murder."³²

Makki spoke in terms of merit (*faḍl*) and neglect of merit. To father a child is a meritorious act in the eyes of God. The Prophet is reported to have said: "Let a man have intercourse with his wife, because a reward will be credited to him in the form of a male child who will fight and die for the cause of God."³³ When coitus interruptus is practised, this merit is lost. Makki explicitly equated the deliberate neglect of the merit of generation with murder.

Makki discredited coitus interruptus further by associating it with the pre-Islamic "Jahiliyya", the time of ignorance and idolatry (*širk*). He condemned coitus interruptus as containing "an element of idolatry (*daqīqa min al-širk*)"³⁴, because, he explained, the same motives which drove the people of the Jahiliyya to kill their daughters³⁵ drove people in his days to practice coitus interruptus. For Makki, these motives were as condemnable as the practice itself.

Makki mentioned fear of daughters as only one reason for using contraception. Another reason he gave was women's aversion to pregnancy and childbirth because of, what he called, an extreme obsession with cleanliness and personal hygiene.³⁶ The use

³⁰A similar idea was expressed by Hieronymus (one of the Roman Fathers of the Church, who lived in the fourth century), who called coitus interruptus "murder [of] a man not yet born ." (J.T.Noonan, *Contraception*, p.100).

³¹Makki, *Qūt al-qulūb*, vol.2, p. 256; St. Augustine describes the biblical Onan as the symbol of a man who, [when he practiced coitus interruptus], "does not do the good he is capable of." (J.T.Noonan, *Contraception*, p.121).

³²Makki, *Qūt al-qulūb*, vol.2, p.256.

³³ibid.

³⁴ibid.

³⁵namely, Makki said, "the fear that they would cause shame, because of an aversion to supporting them and because of stinginess and fear of poverty ."Makki, *Qūt al-qulūb*, p. 256.

³⁶ibid., pp.256-7.

of contraception for the sake of personal convenience is particularly associated with the women of the Kharijites.³⁷ Makki condemned their behaviour as an innovation for which no precedent can be found in the time of the Prophet (*bid'ā* ³⁸) and rejected this motive for the use of contraception as vehemently as the first.³⁹ Generally, by associating coitus interruptus with communities which are not part of mainstream Islam (the Kharijites), or of Islam at all (the Jahiliyya), and by condemning its use as an innovation, Makki implied that good Muslims should not practice it.

Ghazali disagreed as much with Makki's equation of coitus interruptus with murder as with his narrow view of the reasons for practising it. Ghazali's response to Makki is "the most thorough statement of the Islamic permission of contraception" and "one of the most remarkable documents in the history of birth control."⁴⁰ Ghazali's answer can be divided into three parts: he began by refuting Makki's argument that the deliberate neglect of the merit of generation is equal to murder. Secondly, by drawing on the prevailing biological theories, he demonstrated that it is absurd to equate the mere prevention of pregnancy with the murder of a fully developed child. Finally, Ghazali provided a number of reasons for the use of contraception which partly arise out of a specifically Muslim context (slave-marriage and concubinage) and certainly reflect and address the legitimate concerns of his fellow-Muslims.

Neglect of merit

Ghazali admitted that the practice of withdrawal constitutes neglect of what is in principle of greater merit, namely, the fathering of a child. However, in his view, this is no more reprehensible than it is "for someone sitting in a mosque to remain idle and not to occupy himself with meditation or prayer, or for a resident of Mecca not to perform the Pilgrimage every year."⁴¹ In all three cases, Ghazali argued, the opportunity to do something worthy is missed, but that does not amount to a sinful act, let alone murder.

³⁷The earliest of the religious sects of Islam, which disturbed the peace of the eastern part of the Muslim empire by means of continual insurrection, and thus threatened the empire's unity. G. Levi Della Vida, "Kharidjites", *Encyclopedia of Islam*, 2nd. ed. (Leiden:E.J. Brill, 1978), vol.4, p.1074.

³⁸J.Robson, "Bid'a", *Encyclopedia of Islam*, 2nd. ed. (Leiden: E.J.Brill, 1960), vol.1, p.1199.

³⁹Makki, *Qūt al-qulūb*, p. 257.

⁴⁰B.Musallam, *Sex and Society*, p.17.

⁴¹Ghazali, *Iḥyāʾ*, vol.2, p.51.

Ghazali took the analogy⁴² further and argued that, equally, one could "abstain from marriage altogether, or marry but not have sexual intercourse, or have sexual intercourse but not ejaculate. All this constitutes the neglect of what would be better, but it does not in itself violate [any] prohibition."⁴³ "Because", Ghazali explained, "a child is brought into existence by placing semen into the womb, and that has a sequence of four causes: 1. marriage, 2. intercourse, 3. ejaculation and 4. remaining in the vagina long enough for the semen to settle in the womb. Even if some of these causes are more immediate [to generation] than others, nevertheless to abstain from the fourth cause is like abstaining from the third, to abstain from the third like abstaining from the second, and to abstain from the second like abstaining from the first."⁴⁴

Makki equated the neglect of merit with murder. Ghazali showed that it is impossible to equate the abstention from one cause of generation (insemination) with murder when no one, least of all Makki, would even consider accusing the celibate, who also abstains from one of the causes of generation (marriage) of murder.

The biology of reproduction

For Makki, coitus interruptus was also equal to murder because, in his view, the destruction of semen is equal to the destruction of an existing being. By drawing on his knowledge of the biology of reproduction, Ghazali was able to show that the destruction of semen as such can not be a crime since semen alone is insufficient for generation. Ghazali focused on the biological fact that both a male and a female contribution are needed for the generation of a child. He said: "A child is not created from the semen (*manī*) of the man alone, but from the semen of both spouses together, either from his sperm (*mā'ihī*) and her sperm (*mā'ihā*), or from his sperm and her menstrual blood."⁴⁵ Ghazali quoted Aristotle's view which compared the process of embryonic formation to the curdling of milk. Milk turns into curd through the addition of rennet. Similarly, menstrual blood coagulates (*in'aqada*) to form an embryo

⁴²the principle of analogy (*qiyās*) is one of the recognized four principles of jurisprudence, *uṣūl al-fiqh*. The others are Quran, Prophetic *hadīth* and consensus (*ijmā'*).

⁴³such as, for example, the prohibition to kill.

⁴⁴Ghazali, *Iḥyā'*, vol.2, p.51.

⁴⁵ibid.

through the addition (and only through that) of male semen.⁴⁶ It emerges clearly that "the first cause of being is the placing of the sperm in the womb, not its emission from the penis."⁴⁷

Ghazali's detailed (if dated) knowledge of the process of embryonic formation allowed him to make a distinction between the time before semen has reached the womb and after. The prevention of semen from reaching the womb, ie. contraception, merely precludes the formation of the embryo, it does not constitute the destruction of an existing being (*maujūd ḥāṣil*), as it would in the case of abortion, or worse, infanticide (*waʿd*).

In Ghazali's view, withdrawal therefore amounts to nothing more than the withdrawal of an offer in a contract (*ʿaqd*)⁴⁸. He said: "The two fluids behave like the offer (*ījāb*) and acceptance (*qabūl*) in legal contracts: the one who makes the offer and then withdraws it before it has been accepted does not commit a breach of contract. But whenever both offer and acceptance have taken place, a subsequent withdrawal constitutes a termination (*rafʿ*), a cancellation (*fask*) and breach of contract (*qaṭʿ*). In the same way, just as no child is created from semen while it is still in the vertebra, no child is created from semen that has merely emerged from the penis (*iḥlīl*)⁴⁹. It is only when the [male] semen mingles with the woman's semen or blood [that a child is created]."⁵⁰

Legitimate and illegitimate reasons

Makki could only think of two motives for contraception: a dislike for daughters and women's aversion to pregnancy for reasons of personal convenience. In Makki's view, the use of contraception can "only result from an immoral intention that somewhat smacks of hidden idolatry."⁵¹ In other words, for Makki, the motives alone provided enough reason for condemning coitus interruptus.

⁴⁶ibid.

⁴⁷ibid.

⁴⁸as Musallam has pointed out, *ʿaqd* (contract) and *inʿiqād* (formation of the embryo) come from the same root, a-q-d-, meaning to tie, put together, join. This made it possible for Ghazali to use his analogy on contracts. (B.Musallam, *Sex and Society*, p.18)

⁴⁹lit. urethra

⁵⁰Ghazali, *Iḥyāʿ*, vol.2, p.51.

⁵¹Ghazali summing up Makki's attitude, *Iḥyāʿ*, vol.2, p. 52.

Ghazali agreed with Makki that the two motives he described were immoral and blameworthy. But in Ghazali's view, even if the motives are condemnable, the use of contraception itself remains lawful. Ghazali said: "The sin lies in the intention, not in [the act of] avoiding [pregnancy]."⁵²

In addition, Ghazali was able to think of three good reasons for the use of contraception. Two are economic: the avoidance of crushing financial obligations and the loss of property. Ghazali considered a man's wish to limit the size of his family, and thus the number of his financial dependants, perfectly acceptable. He argued that substantial financial obligations can be a source of great distress and anxiety, and that the need to feed a large family can also force a man to engage in illegal transactions. Ghazali admitted that it would be better to put complete trust in God, and that the use of contraception thus falls short of perfect conduct. But on the other hand, "to consider consequences and to protect and save one's wealth is not prohibited."⁵³ In addition, Ghazali stressed that, "financial well-being (*qillat al-ḥaraj*) is an aid in religion."⁵⁴

Ghazali had used the economic argument (that is, the difficulty of supporting dependants) once before, namely as an argument in favour of celibacy. It is conceivable that Ghazali took so much care over explaining the legality of the use of contraception because it allowed him to suggest a middle path: marriage, but with the possibility of adjusting the number of dependants to one's economic circumstances. The way Makki treated the matter suggests that, for him, the question of whether the use of contraception is acceptable or not was largely theoretical. Perhaps contraception was not one of the most pressing concerns for this celibate ascetic. For Ghazali, however, the discussion was loaded with practical implications, for if you can practice contraception, you can both marry and manage.

Ghazali also supported the use of contraception with a slave concubine, since a slave woman who has borne her master a child can no longer be sold. There could be, in his view, no objection to protect oneself against the loss of valuable property.

⁵²ibid.

⁵³ibid.

⁵⁴ibid.

As a third motivation, Ghazali mentioned a man's wish to preserve a woman's "beauty and natural plumpness, in order to prolong enjoyment of her"⁵⁵, and his wish to protect her against the dangers of childbirth.

The great majority of mediaeval Muslim jurists permitted contraception.⁵⁶ Their decision was shaped by a number of factors. The Quran is silent on the question of contraception. But Muslim jurists were able to base their discussions of contraception on a substantial body of Prophetic traditions on coitus interruptus. The majority of Prophetic traditions permitted coitus interruptus. Indeed, out of the seven Prophetic traditions most frequently quoted on the subject⁵⁷, only one could serve as the basis of an argument for prohibition. But, as Musallam points out, "Muslim jurists did not settle their arguments simply by counting *hadith*."⁵⁸ Two additional factors were influential in shaping the Muslim attitude in favour of contraception.

One of them was the prevalence, in mediaeval Muslim circles, of a biological theory of reproduction "which maintained that both male and female contribute equally to the formation of the embryo."⁵⁹ At the same time, Muslim jurists did not attach any special value to semen as such, which allowed them to permit methods of contraception which prevent the semen from reaching the uterus.

The other influential factor was the "actual contraceptive experience of mediaeval society."⁶⁰ Observation taught mediaeval Muslim jurists that the practice of withdrawal was sometimes effective in preventing pregnancy and sometimes not. This made it possible to argue that God causes children to be born regardless of whether man tries to prevent it or not. The notion was supported by Prophetic traditions such as this one: "Even if you spill the seed from which a child was meant to be born on a rock, God will bring forth from that rock a child."⁶¹ The discrepancy between the human desire to

⁵⁵ibid.

⁵⁶Musallam states: "Apart from Ibn Hazm [who condemned coitus interruptus absolutely], I have searched in vain for opposition to the basic permission of contraception among the writings of Muslim jurists of all the historical Sunni and Shi'i schools of law spanning the period from the birth of Islam to the nineteenth century." (B.Musallam, *Sex and Society in Islam*, p.28).

⁵⁷listed by Musallam, *ibid.*, pp.15-16.

⁵⁸ibid., p.19.

⁵⁹ibid. p.40.

⁶⁰ibid., p.19.

⁶¹ibid., p.21.

prevent pregnancy and the actual experience that children were born regardlessly "left ample room for God's will to operate."⁶² "That God is all-powerful, and that ultimately no human act can avert a creation He truly intends, was the dominant reason in the *hadith* which the jurists employed to permit contraception."⁶³

Ghazali's attitude towards coitus interruptus was shaped by the prevailing notion that coitus interruptus is permissible partly because it is unreliable. Ghazali began and ended the discussion of coitus interruptus with references to the notion that if God wills a creature to be born it will be. At the beginning, he quoted the Prophet as having said: "There is not a single soul whose existence God has decreed but will come into existence."⁶⁴ And he concluded the discussion with the following story: "A man came to the Prophet and said: 'I own a slave girl who serves us and waters our date palms. I have intercourse with her, but I would hate her to get pregnant.' The Prophet replied: 'If you wish, you can practise coitus interruptus with her, because whatever has been decreed for her will come to her.' The man stayed away for some time, then he came back to the Prophet and told him that the slave girl was pregnant, and the Prophet answered: 'I told you that whatever had been decreed for her would come to her.'"⁶⁵

DIVORCE

Both Makki and Ghazali discuss divorce and use much of the same material. Once again, Ghazali copied most of the material Makki had collected on the subject - the laws of divorce, as determined by the jurists, as well as traditions from the Prophet and others. Nevertheless, Ghazali's very different attitude towards divorce emerges clearly from the way in which he rearranges Makki's material, as well as his omission of parts of Makki's text.

Makki's attitude towards divorce was shaped by his negative view of marriage. He approved of divorce because he saw it as an important means of escape from marriage. Makki's argument in favour of celibacy was addressed at unmarried as well as married

⁶²ibid., p.21.

⁶³ibid., p.21.

⁶⁴Ghazali, *Iḥyāʾ*, vol.2, p.51.

⁶⁵ibid., p.53.

men. He was telling the unmarried man to remain celibate. But he was also encouraging the married man to abandon marriage through divorce as soon as it became a burden. The following are the most important elements of Makki's portrayal of divorce: He played down the religious disapproval of divorce, and emphasised instead that God promised to provide for those who separate. He showed himself far more worried about the influence a bad wife could have on her husband than the harm a divorce might cause her. Finally, he put little faith in reconciliation as a means of saving a troubled marriage.

Ghazali disapproved of easy divorce. He took religious disapproval of divorce very seriously and was less impressed by God's promise to look after divorcees. In addition, Ghazali believed that the harm divorce could cause the woman was far more significant than the harm a bad wife could cause her husband. Also, Ghazali did not agree with Makki that all marital discord had to end in divorce.

Disapproval of divorce is mentioned in the Quran : "Then if they obey you, seek not a way against them."⁶⁶ According to Makki, this meant: "do not search for a pretext for divorce and for quarrel and adversity"⁶⁷, according to Ghazali, it meant: "do not make up false reasons for separation"⁶⁸. Disapproval is also reported from the Prophet, who allegedly said that among all permitted things, divorce is the one God hates most.⁶⁹ Makki quoted both the Prophetic tradition and the Quranic verse, but as isolated statements in a section which is otherwise dominated by arguments in favour of divorce. The Prophetic tradition appears somewhere in the middle of the section, the Quranic verse at the very end. Ghazali, however, placed the two statements at the beginning of his section on divorce. Moreover, he considered them related: "A man should know that divorce is permitted, but that of all permitted things it is the one God hates most, and that it is only permitted if it does not cause harm unnecessarily. Whenever a man divorces a woman, he harms her, and he is not permitted to do so

⁶⁶M.Pickthall, *The Glorious Koran*, Sura 4, Verse 34.

⁶⁷Makki, *Qūt al-qulūb*, vol.2, p.254

⁶⁸Ghazali, *Ihyāʾ*, vol.2, p.55

⁶⁹ibid.; Makki, *Qūt al-qulūb*, vol.2, p.254.

unless she has committed a serious offence, or there is a serious necessity on his part, because God said: 'If they obey you, seek not a way against them.'"⁷⁰

Makki seemed to want to reassure his married reader that God would provide for him and his wife in case of separation: "God has promised to provide abundance in case of separation, just as he has promised it within marriage. He said: 'But if they separate, Allah will compensate each out of His abundance.'⁷¹ God also said: 'And marry such of you as are solitary and the pious of your slaves and maid-servants. If they be poor, Allah will enrich them of His bounty.'"⁷² Makki explained: "This could be enrichment in the sense of money, and it could be that God makes them independent of each other through what He has appointed for them from His mysterious kindness. A tradition says: 'The pleas of three people are not answered: A man who has a bad wife who says 'May God relieve me of you.', because God has put divorce at his disposal [].'"⁷³ Makki repeated the Quranic reassurance that God would provide for those who separate three times⁷⁴. Ghazali also referred to it, but only once, and in the specific context of showing that divorce was permitted by God, not encouraged. He said: "The aim of this part was to show that divorce is permitted (*mubāḥ*). God has promised riches in the case of both marriage and separation, because He said: 'And marry such of you as are solitary and the pious of your slaves and maid-servants. If they be poor, Allah will enrich them of His bounty' and also: 'But if they separate, Allah will compensate each out of His abundance.'"⁷⁵

⁷⁰ Ghazali also slightly modified the interpretation of a Quranic verse mentioned by Makki. Makki said: "Ibn Mas'ud interpreted God's words (65:1) 'Expel them not from their houses nor let them go forth unless they commit open immorality.' as 'if she abuses his family and troubles her husband, that is an open immorality (*fāḥiṣa*).'" "However," Makki explained, "this refers (only) to the *'idda* period. [] There are some people who think that divorce is prohibited, interpreting this Quranic verse in an inappropriate way. Divorce is permitted[]." (Makki, *Qūt al-qulūb*, vol.2, p.254) Ghazali agreed with Makki that this Quranic verse refers primarily to the *'idda* period, and that it does not constitute a prohibition of divorce as such. "But", Ghazali added, "[this verse] also has the wider implication that one should never send a woman away without a good reason." Ghazali, *Iḥyā'*, vol.2, p.55.

⁷¹ M. Pickthall, *The Glorious Koran*, Sura 4, Verse 130. Makki, *Qūt al-qulūb*, vol.2, p.254, also p.251 and p.259.

⁷² M. Pickthall, *The Glorious Koran*, Sura 24, Verse 32. Makki, *Qūt al-qulūb*, vol.2, p.254, also p.259.

⁷³ *ibid.* p.254

⁷⁴ Makki, *Qūt al-qulūb*, vol.2, pages 251, 254 and 259.

⁷⁵ Ghazali, *Iḥyā'*, vol. 2, p.56:

Makki and Ghazali both discussed divorce in two different contexts. In the first instance, the reason for separation is to be found with the woman. Both authors agreed in principle that a troublesome wife provides reason for divorce. The definition of "troublesome", however, is subjective, with Ghazali demanding far more patience from the husband than Makki. Ghazali even portrayed patient forbearance of the wife's faults as a way to train one's character - for him, divorce should only be the very last option. Makki, in contrast, repeatedly stressed that a troublesome wife is detrimental to her husband, and encouraged rather than discouraged separation from her. "If [the woman] bears [hardship] with [her husband] with piety and strength, he should keep her, but if she induces him to sin and animosity then he should separate from her."⁷⁶ Further, Makki quoted Muhammad bn al-Hanafiyya⁷⁷, who said: "Every wise man who does not live in harmony with his companion can find an escape from her. God will create a release and a way out for him."⁷⁸ Here, Makki defined the woman who deserves to be divorced as the one who "uses foul language, is unfriendly, very ignorant, and very troublesome"⁷⁹, and he pointed out that even the Prophet is reported to have advised a man who complained of his wife's bad language to divorce her.⁸⁰

In the second instance, the reason for separation is to be found with the man. In cases where he is not satisfied - emotionally or sexually - by his wife (or wives), he is granted the option of exchanging her (or them) for others.⁸¹ Ghazali said: "If God grants him love (*mawadda*) and mercy (*rahma*), and his heart finds rest in his wives (*iṭmiʿān qalbihi bihunna*), then he should keep them; but if that is not the case, then it is better for him to exchange them for other women."⁸² Both authors sanction divorce for this reason, quoting the example of 'Ali, the Prophet's son-in-law, and

⁷⁶Makki, *Qūt al-qulūb*, vol.2, p.251. This passage is immediately followed by a description of the dangers of family obligations - in other words, more reason to divorce!

⁷⁷a son of 'Ali bn Abi Talib, born in 16 A.H.. Fr. Buhl, "Muhammad Ibn al-Hanafiyya", *Encyclopedia of Islam*, 2nd ed.(Leiden: E.J.Brill, 1991),vol.7, p.402f.

⁷⁸Makki, *Qūt al-qulūb*, vol.2, p.254.

⁷⁹ibid.

⁸⁰ibid.

⁸¹Ghazali, *Iḥyāʿ*, vol.2, p.30; Makki, *Qūt al-qulūb*, vol.2, p.246-7.

⁸²Ghazali, *Iḥyāʿ*, vol.2, p.30; in accordance with the Quran: "He created for you helpmeets from yourselves that ye might find rest in them (*litaskunū ilaiha*), and He ordained between you love (*mawadda*) and mercy (*rahma*)."⁸³M.Pickthall, *The Glorious Koran*, Sura 30, Verse 21.

Hasan, the Prophet's grandson, who, with the Prophet's approval, divorced and remarried frequently.⁸³

In this section, Makki quoted three additional traditions describing Hasan's frequent marriages.⁸⁴ He used them to further demonstrate the apparent ease with which the early Muslims divorced their wives. However, the three traditions he quoted reveal a conflict - in the first one, 'Ali, Hasan's father, reproaches his son for his frequent divorces. The two other traditions address the harm and grief divorce can cause the woman. In one of them, a man even refuses to marry his daughter to Hasan, for fear that he might divorce and upset her. When Ghazali copied these three traditions from Makki, he chose to focus on the problematic aspects of divorce which they address. Ghazali emphasized that a man should not divorce his wife easily, since it always causes her harm, and he used the three traditions about Hasan⁸⁵ to support his argument.

Makki suggested that marital discord inevitably leads to separation and that reconciliation is destined to fail. His dismissal of reconciliation underlines his lack of interest in the survival of a marriage. For Ghazali, marital discord and divorce are two unrelated issues, which he discussed in different chapters.

Makki and Ghazali highlighted different aspects of divorce. Makki's aim was to stress that divorce always provides a legitimate escape from an unsatisfactory marriage. Repeatedly, Makki encouraged his reader to separate from a bad spouse and reassured him that God would provide in case of separation.⁸⁶ Ghazali's aim, in response to Makki's carefree attitude, was to remind his readers that divorce should not be treated lightly and used unnecessarily. He considered divorce one of the areas of marital relations where the husband must not abuse his privilege⁸⁷, reminding him that divorce is harmful to the woman. Makki mentioned divorce at five different points in his text.⁸⁸

⁸³Referring to his frequent marriages, the Prophet is reported to have said to Hasan: "You resemble me physiologically (*kalqī*) and psychologically (*kuluqī*)." Makki, *Qūt al-qulūb*, vol.2, p.246; Ghazali, *Iḥyāʾ*, vol.2, p.30.

⁸⁴Makki, *Qūt al-qulūb*, vol.2, p.246.

⁸⁵Ghazali, *Iḥyāʾ*, vol. 2, p.56.

⁸⁶four times: on page 251, twice at separate points on page 254 and once on page 259.

⁸⁷a man can unilaterally divorce his wife at any time, a woman must first obtain her husband's consent.

⁸⁸Makki, *Qūt al-qulūb*, vol.2, pages.246, 251, 254, 258 and 259.

Ghazali mentioned it only twice.⁸⁹ The space, in terms of pages, which both devote to the subject is equal.⁹⁰ However, in Makki's text, the reader is reminded more frequently of the divorce option.

Once a man has decided on divorce, he should observe the proper divorce procedure prescribed by the law.⁹¹ On this, the two authors show no disagreement⁹². Both strongly advised the man to use the single repudiation formula, which is sufficient to end the marriage, but allows him to take his wife back should he change his mind. Both also admonished the husband to divorce during a time of inter-menstrual purity, since divorce pronounced during menstruation prolongs the woman's waiting period (*ʿidda*). Ghazali added that the man should "kindly explain to his wife his reasons for divorcing her, without being blunt or showing contempt. And he should conciliate her with a present to please and console her for the pain he has inflicted upon her through separation." He also added that "the man must not reveal secrets about his wife, not when he divorces her nor during their marriage."⁹³

Both Makki and Ghazali granted the woman the right to seek divorce (*kulʿ*) from her husband, but agreed that she must not do so without good reason.

⁸⁹Ghazali, *Iḥyāʾ*, vol. 2, p.30 and pp.55-6.

⁹⁰roughly five and a half pages of translated text. It is worth noting the difference in space Makki allocates to the laws of divorce (2 1/2 pages) and the laws of marriage (4 lines)!

⁹¹described in detail in chapter on the laws of marriage and divorce.

⁹²with one exception. Makki said: "For someone who divorces using the three-in-one formula, or during menstruation, the divorce is binding, and the woman remains unlawful to him until she has married (and divorced) someone else (*Qūt al-qulūb*, vol.2, p.258)." According to Makki, divorce pronounced during menstruation is definite and requires *tahlil* if the couple wish to remarry. This rule is not repeated anywhere else, neither by Ghazali, nor in any of the books of Islamic law I have studied.

⁹³Ghazali, *Iḥyāʾ*, vol.2, p.56

CONCLUSION: A CHOICE

Both Makki and Ghazali seem to present their readers with a choice between the two equally valid options of marriage and celibacy. However, this can only really be said of Ghazali's discussion. Makki claimed to present his readers with a choice between marriage and celibacy, but underneath this apparent discussion of equally valid alternatives, he was clearly presenting an argument in favour of celibacy.

Makki found himself in the difficult position of arguing against marriage in a society which welcomed and encouraged it. The way he presented his argument suggests that Makki did not consider himself at liberty to present a straightforward and undisguised case in favour of celibacy. Makki probably already went as far as a Muslim could have gone in condemning marriage and praising celibacy without being accused of heresy. He had to include in his argument the well-known traditional Islamic material in favour of marriage. But the only way he could do so and still make a convincing case in favour of celibacy was through manipulation of the traditional pro-marriage material. He placed the traditional material in a manner that weakened the impact of their pro-marriage message. But Makki appears to have availed himself of another strategy: he claimed to be presenting a choice between marriage and celibacy, making it necessary for him to discuss both¹. Three aspects indicate that this apparent discussion of two equally valid alternatives is a facade; that, indeed, Makki was only claiming to present a choice.

Makki opened his discussion with the suggestion that God did not give a universal command to marry, and he seemed to present the ambiguity in God's command as the justification for the discussion of marriage and celibacy. Given the importance of this suggestion as the primary justification for the entire discussion, it is surprising that Makki mentioned it only very briefly at the opening of the discussion, and only elaborated it at the very end of his discussion. There he said: "God has neither prescribed (*iftaraḍa*) marriage nor celibacy, and He did not make it a duty (*lam yūjib*) to have four wives. Rather, He ordered that the heart be righteous (*ṣalāḥ al-*

¹ie. marriage, too.

qalb), religion protected (*salāmat al-dīn*), that the mind be at peace (*sukūn al-nafs*), and that everything be done according to necessity. For someone who finds righteousness (*ṣalāḥ*) in marriage, marriage is better. If his moral uprightness (*istiḳāma*) and peace of mind (*sukūn al-nafs*) can only be secured by four wives, he can marry four, as long as he upholds the rules [of polygamy]. But if he is satisfied with one wife, one wife is better (*aṣḥaḥ*) and safer (*ilā al-salāma aqrab*). And for someone who finds righteousness (*ṣalāḥ ḥālihi*), a sound, healthy heart (*istiḳāmat qalbihi*) and peace of mind (*sukūn nafsihi*) in celibacy, celibacy is safer (*aslam*)."²

Makki seemed to suggest that God revealed no preference for either marriage or celibacy, but that He is most concerned with the believer's spiritual integrity. According to Makki, God's central command is "that the heart be righteous (*ṣalāḥ al-qalb*), religion protected (*salāmat al-dīn*) and that the mind be at peace (*sukūn al-nafs*)."² He argued that the lifestyle which allows optimal fulfilment of God's command is best, whether this be monogamous marriage, polygamous marriage or celibacy.

Why did Makki not elaborate this claim at the beginning of his discussion? Conceivably because he wanted the beginning of his discussion - which is arguably the most important part of the text, and the part which leaves the strongest impression - to be dominated by his arguments in favour of celibacy. Had Makki opened the discussion with the statement that marriage and celibacy are equally good choices and then presented the traditional material on marriage and celibacy, there is no doubt that the traditions in favour of marriage would have outweighed those in favour of celibacy. Instead, Makki opened the discussion with a forceful argument in favour of celibacy.

Makki's claim to be presenting two equally valid alternatives is also not supported by his classification of people. Makki classified people at two points in his discussion: once at the beginning, and once in the conclusion. At the beginning, Makki distinguished between two types of people, those who need to marry in order to protect themselves against the dangers of unfulfilled desire (*al-muḥtājīn*), and those who are

²Makki, *Qūt al-qulūb*, vol.2, p.259.

in control of sexual desire and safe from its dangers (*al-ma^cṣūmīn*).³ *Ma^cṣūm* is a term normally used to describe the infallibility of prophets; Makki appears to differentiate between ordinary mortals, who need marriage, and the elect, who can do without it.

In his conclusion, Makki divided people into two categories: those who are strong and possess will and determination (*ʿazīma*) and those who are lax (*rukṣa*). The first category includes two types: those who "marry, who have the patience to abide by its rules and to treat women well."⁴ and those "who can live without women and the sexual satisfaction they provide, who are fully occupied with liberating themselves for the Hereafter".⁵ Makki here appears to put on the same level those who marry for good reason (ie. because they know of the merit to be gained from supporting a family and are strong enough to fulfil their marital duties), and those who remain celibate for good reasons (ie. because they want to be free of those same family obligations in order to fully concentrate on worship, and are strong enough to control their passions). The second category also includes two types: people whose lives are "filled with devilish insinuations, and fear of fornication"⁶ and those who say (with Sufyan al-Thauri): "How nice is the life of the bachelor who owns his own key; even if the house is drafty, there is no screaming and shouting."⁷ These are the weak who marry because they are unable to control their sexual desire, and the selfish who stay alone because they do not want to be troubled by dependants.

The way Makki presented the issue in the conclusion suggests that the two kinds of people belonging to the first category - those who marry for the right reasons as well as those who remain celibate for the right reasons- are equally strong and determined (and thus equally admirable). But this classification contradicts his classification of people into *al-muḥtājīn* and *al-ma^cṣūmīn* in the opening paragraph. There, Makki divided

³ibid., p.237.

⁴ibid., p.259.

⁵ibid.

⁶ibid.

⁷ibid.

people into the inferior, who marry, and the superior, who do not.⁸ The classification of people into *al-muḥtājīn* and *al-maʿṣūmīn* takes place at the very beginning; it presumably carries greater weight. It is possible, however, that Makki nevertheless considered it opportune to end on a pro-marriage note, and to say something positive and flattering about the married, simply in order not to alienate the Muslim majority and many distinguished members of the Muslim community.⁹

A third indication that Makki was really more interested in celibacy than in marriage is a discrepancy in the quality of his arguments in favour of celibacy and his arguments in favour of marriage. Makki's arguments in favour of celibacy are more elaborate and presented more convincingly than his arguments in favour of marriage. His arguments in favour of marriage often consist of nothing but lists of traditions strung together without any further comment from Makki himself. Marriage, for him, seems to have remained a largely hypothetical option which he did not think about in practical terms. This is particularly noticeable in Makki's discussion of polygamy, which verges on the absurd. Makki forced his argument, and does not seem to have thought about the practical implications of a polygamous marriage. The discussion of polygamy seems to be mentioned primarily in order for Makki to complete his claim that God has given man the option of celibacy, marriage and polygamy.

Ghazali's discussion was a genuine discussion, because for Ghazali the controversy remained unresolved. There could be no absolute rule; rather, he considered the choice for either marriage or celibacy to be entirely dependent on the circumstances of the individual believer, who must decide how best to lead a religious life. The most obvious benefits of marriage are progeny and sexual satisfaction, while the most obvious harms are the risk of earning an illegal income and distraction from God. Ghazali concluded his discussion of marriage and celibacy in the first chapter of the *Kitāb ādāb al-nikāḥ* with a description of several situations in which the believer

⁸ibid., p.237.

⁹The wish to flatter married Muslims could also explain Makki's frequent quotations from Bishr al-Hafi, a well-known Sufi. Bishr is reported to have made several statements in which he appeared to admit his own inferiority as a celibate in comparison to married men. Makki, *Qūt al-qulūb*, vol.2, p.241.

could find himself.¹⁰ In some cases, Ghazali advised marriage, in other cases, celibacy. Ghazali considered marriage the better option for the following people:

- a) a young man who finds himself in the ideal situation of being wealthy and of fine character, who is so committed to his religious practices that marriage will not distract him from God, who needs sexual satisfaction, a housekeeper and the support of an extended family.
- b) someone in dire need of sexual satisfaction, who fears that he will otherwise commit the sin of fornication. He should marry even if he runs the risk of earning money illegally and of being distracted.
- c) someone who is able to earn money by legal means and can do so within a reasonable amount of time. He will find time to seclude himself for worship (*al-takalli* [] *li-ibādat*) during the remaining hours of the day and during the night. "In any case," Ghazali said, "it is impossible to worship without rest."¹¹
- d) someone who worships God with physical acts, such as supererogatory prayer, pilgrimage and other physical deeds, rather than meditation. He should marry even if all his time is spent earning an honest income. Ghazali explained that "earning an honest income, supporting a family, striving to have children and patiently enduring women's tempers are forms of religious worship in their own right and as meritorious as supererogatory prayer."¹²

He considered celibacy better for the following people:

- a) someone who would risk earning money illegally and who would be distracted from worship, and who is not troubled by sexual desire. Ghazali explained that "there is no good in anything that distracts from God nor in earning money illegally. The damage to moral integrity and spiritual advancement¹³ caused by these factors is not compensated by [the merit of having] children. Marriage for the sake of progeny is a request for the hypothetical life of a child, but the

¹⁰Ghazali, *Iḥyāʾ*, vol.2, pp.34-35.

¹¹ibid., p.35.

¹²ibid.

¹³lit. "damage to religion", *naqṣān fī al-dīn*.

damage to religion is definite."¹⁴ Ghazali used the analogy of capital and interest payment - religion is the capital, children are the interest. Capital is the vital basis; in religious terms, religious integrity provides the basis for salvation. If this basis is spoilt, the hope of salvation is lost. Interest payment, however, is merely an additional benefit.

- b) someone who would risk earning money illegally and who would be distracted from worship, who is troubled by his sexual desire, but only to the extent that he looks at what is forbidden. As long as he can trust himself not to give in to his desire, he should not marry.
- c) someone who would risk earning money illegally and who would be distracted from worship, who is troubled by his sexual desire, but only to the extent that he cannot prevent distracting thoughts from entering his mind. He also should not marry.
- d) a man whose worship consists of study, contemplation and meditation, who is able to earn money by legal means, but only if he devotes all his time to it, leaving him no time to seclude himself for worship.

There is evidence to suggest that Ghazali was more concerned than Makki to present marriage as a real alternative to celibacy. Ghazali included in his discussion certain practical aspects of marriage Makki never mentioned. The *Kitāb ādāb al-nikāḥ* provides a comprehensive list of the laws of marriage, including the legal conditions of the marriage contract and the eligibility of the spouses. Islamic law defines marriage as a contract, which, in order to be valid, must contain certain elements and must be contracted following a certain procedure. Both authors make reference to the marriage contract. In Makki's text, however, the reference is very brief.¹⁵ Makki only mentioned the need for a *wālīy* and two witnesses - information which would have been insufficient for his reader, who would have had to consult additional legal material to be fully informed. Ghazali provided comprehensive information on all elements of

¹⁴Ghazali, *Iḥyāʾ*, vol.2, p.35.

¹⁵Makki, *Qūt al-qulūb*, vol.2, p.251.

the contract, the *wālīy*, the woman's consent, the presence of two witnesses, the formula of offer and acceptance as well as eligibility of the spouses.¹⁶ The importance which each author attached to the laws of marriage can also be gathered merely by looking at the space they devoted to the matter: barely four lines in the case of Makki compared to almost four pages in the case of Ghazali.¹⁷

Certain elements of the marriage ceremony are not prescribed by the law but by custom. They are not essential for the validity of the marriage, but are considered proper. Ghazali recommended a) that a marriage proposal (*kitba*) precede the actual contracting of the marriage, b) that a religious address (*kuṭba*) accompany it, c) that bride and groom meet and be informed about one another prior to the marriage, d) that guests be invited to the ceremony, e) that the man marry with the right intentions and e) that marriage be contracted in the mosque and in the month of *šawwāl*.¹⁸ Makki mentions only two of these customary elements of the marriage ceremony, namely the desirability of knowing something about the spouse before marriage, and right intentions.¹⁹

Ghazali devoted a separate section to childbirth. He informed the reader about the customs to be observed in the event of childbirth, and was particularly concerned that fathers should not show preference for sons: "A man should not be overjoyed at the birth of a boy and grieved at the birth of a girl, because he does not know the good that either of them will bring him."²⁰ Advice of this kind did not appear in Makki's text.

The inclusion in Ghazali's discussion of marriage laws and childbirth makes it closer to the real-life concerns of ordinary Muslims. Makki only addressed the concerns of a small group of ascetics, and remained highly theoretical in many aspects of his discussion that did not touch upon these immediate concerns. The extent to which Ghazali was concerned about the practicalities of life is reflected well in his fourth argument in favour of marriage. Ghazali argued that marriage can be very important

¹⁶Ghazali, *Iḥyāʾ*, vol.2, pp. 36-37.

¹⁷reference, in this case, is to the space in my own translation of Makki's and Ghazali's texts.

¹⁸Ghazali, *Iḥyāʾ*, vol.2, p. 36.

¹⁹Makki, *Qūt al-qulūb*, vol.2, p.248.

²⁰Ghazali, *Iḥyāʾ*, vol.2, p.53.

because it relieves a man of "the trouble of managing a household and the burden of cooking, sweeping, making beds, cleaning the dishes and generally keeping order. [] Because if he had to do all the household chores, he would waste most of his time on them, and find no time for study and work."²¹

²¹ibid., p.31.

APPENDIX ONE: A STRUCTURAL ANALYSIS (I) - INDEX OF IDENTICAL PASSAGES IN GHAZALI'S AND MAKKI'S TEXT.

The following list provides an index of all parts of Ghazali's discussion of marriage which are taken from Makki's text. Ghazali copied 57,8% of Makki's text into his own. 40% of Ghazali's text consists of material taken from Makki. Makki's discussion consists of 70 pages (of translated text), Ghazali's discussion of 100 pages. In most cases, Ghazali copied traditions from the Prophet and other prominent members of the Muslim community, but he also repeated some of Makki's own ideas and recommendations, as well as passages containing legal advice. The aim of this index is twofold: (1) to show the extent to which Ghazali relied on Makki's text; and (2) to mark significant changes which Ghazali made to Makki's material.¹

The list includes the following:

- statements which Ghazali copied verbatim (including statements where differences concern a word or two, or slight variations in the structure of the sentence).
- statements which show some agreement, but where the final determination of their origin requires both an edited version of Ghazali's and Makki's text, and a thorough study of all of Ghazali's other sources.
- passages where Ghazali takes an idea from Makki, but expresses it differently
- statements which Ghazali quoted as part of a response to Makki.

Ghazali reacted to Makki's text in five different ways:

- (1) he responded to Makki's discussion of marriage by restructuring Makki's argument in favour and against marriage. Makki had tried to deflect the overwhelmingly pro-marriage message of the Quran and Prophetic *ḥadīṭ*.

¹A serious problem arises from the fact that no edited version exists of either Makki's or Ghazali's text. In a large number of instances, passages which appear in both texts are the same but for a word or two; in other cases, the differences are more substantial. Of help is Murtada al-Zabidi's commentary on the *Iḥyāʾ*². Zabidi indicates which parts of Ghazali's text also appear in Makki, and he often uses Makki's text to explain parts of Ghazali's. However, an entirely accurate index of passages which Ghazali copied from Makki will require edited versions of both texts.

Ghazali placed the most important pro-marriage statements from the Quran and the Prophet in a prominent position at the beginning of his discussion. Makki had not imposed a clear structure on his discussion, a fact which allowed him to return, again and again, to his arguments in favour of celibacy. Ghazali rearranged all of the material which he copied from Makki into clearly marked sections, each devoted to a specific aspect of the discussion.

- (2) Ghazali responded to specific issues which Makki raised within the discussion, such as contraception and divorce.
- (3) Ghazali used Makki's text as a convenient source of traditions, many of which he copied without any comment or alteration.
- (4) Ghazali left out parts of Makki's text with which he did not agree, or thought irrelevant, and
- (5) finally, Ghazali added important aspects of marriage which Makki had failed to mention.

One of the most important difference between the two texts, namely Ghazali's omissions of and additions to Makki's text, have, for obvious reasons, not been included in this index of identical passages, but are recaptured here. We find in Makki's *Qūt al-qulūb*, but not in Ghazali's *Kitāb ādāb al-nikāḥ*: Makki's absurd justification of polygamy (pp.244-245); the ascetic's aversion to property (p.238, l.23-25); a monkish fear of masturbation (p.238, p.240); the claim that women's morals and characters have changed for the worse; and the belief that family obligations inevitably jeopardize a man's spiritual advancement. And we find in Ghazali's *Kitāb ādāb al-nikāḥ*, but not in Makki's *Qūt al-qulūb*: an explanation of the purpose of sexuality and the importance of procreation (p.21, pp.24-6, pp.27-8); the laws of marriage (pp.36-7); advice on how to behave in the event of childbirth (pp.53-5); and case examples of those who should marry and those who should not (pp.34-36).

Headings indicate the chapter or section in which traditions and/or statements appear in Ghazali's text (see, Chapter Two: Marriage and Celibacy, pp.28-31, for the structure of the *Kitāb ādāb al-nikāḥ*). References on the left side of the dash (/) are to the

Iḥyāʾ ʿulūm al-dīn, vol.2, pp. 21-60, references on the right side of the dash are to the *Qūt al-qulūb*, vol.2, pp.237-259. Paragraphs on the right side of the page connected to the list of references on the left side of the page by a black arrow describe the content of an entire section. All other explanations refer to only one statement, or a cluster of statements, at a time.

GHAZALI, *IḤYĀʿ ʿULŪM AL-DĪN*, VOL.2 / MAKKI, *QŪT AL-QULŪB*, VOL.2:

2. Chapter One: The Case for and the Case against Marriage

2.1. Traditions in favour of marriage:

2.1.a. From the Quran: —————> Ghazali places the most important Quranic statements in favour of marriage at the front of his discussion. In Makki's text, only one of these Quranic quotes appears at the beginning.

p.21, l.21/p.237, l.28

A direct response to Makki

p.21, l.22-23/p.243, l.4-5

p.21, l.24/p.243, l.6

p.21, l.24 - p.22, l.1/p.243, l.1

p.22, l.1-2/p.241, l.15-17

p.22, l.2-3/p. 243, l.2-3

2.1.b. Prophetic traditions (*ḥadīth*) -> Ghazali placed the most important Prophetic statements on marriage at the beginning of his discussion. In Makki's discussion, only three of these traditions appeared at the beginning. All but one of the remaining six traditions are mentioned after Makki clearly stated his own preference for celibacy, and at the end of a pro-marriage section rather than in a prominent position at the front. In addition, Ghazali underlined the message of these Prophetic traditions with his own comments and explanations; Makki merely listed the traditions.

p.22, l.5-6/p. 242, l.9-10

p.22, l.6-7/p.242, l.32 - p.243, l.1

p.22, l.7/p.238, l.2-3

(also Makki, p.242, l.11)

p.22, l.8/p.242, l.5

p.22, l.8-9/p.242, l. 6-7

(also Ghazali, p.27, l.18-19

and Makki, p.259, l.7-8)

p.22, l.10-11/p. 242, l.7

p.22, l.11-12/p.238, l.3-4

(also Ghazali, p.28, l.10)

p.22, l.13/p.238, l.4-5

p.22, l.13-14/p.240, l.15-16

(also Ghazali p.27, l.18)

2.1.c. Non-Prophetic traditions —>

Ghazali mentioned pro-marriage traditions from prominent members of the Muslim community before he mentioned traditions that speak of the difficult aspects of marriage. Makki reported these traditions in the reverse order.

p.23, l.1/ p.240, l. 22-23
 p.23, l.2/p.240, l. 20-21
 (also Ghazali p.28, l.16)
 p.23, l.4-5/p.240, l.21-22
 p.23, l.5-6/p. 241, l.27-28
 p.23, l.6-7/p.241, l.28-29
 p.23, l.8/p.242, l.11-12
 p.23, l.8-15/p.241, l.29 - p.242, l.5
 p.23, l.15-18/p.241, l.10-15
 p.23, l.18-20/p.241, l.17-19
 p.23, l.20/p.241, l.19

p.23, l.21-22/p.241, l.20-22

Makki quoted this tradition once in support of marriage, once as a warning against it (Makki p.238, l.5-7)

p.23, l.22-23/p.241, l.22-23

Both Makki and Ghazali quoted this tradition once in support of marriage, and once as a warning against it (Ghazali p.34, l.8-9/ Makki p.238, l.7-8)

p.23, l.23-25/p.241, l.23-26
 p.23, l.25-26/p.241, l.26-27
 p.23, l.26-28/p. 241, l.7-9
 p.23, l.28/p. 241, l.9
 p.24, l.1-2/p.243, l.3-4

2.2. Traditions against marriage —>

Ghazali collected these traditions into one section. Makki had distributed them throughout his discussion, reminding the reader repeatedly of the problematic aspects of marriage.

p.24, l.3-4 /p. 239, l.15-16
 p.24, l.4-5/p.239, l.16-17

Ghazali placed two Prophetic *hadit* which speak against marriage at the beginning of this section. Then he mentioned pro-celibacy statements from other sources. Makki opened his pro-celibacy section with non-Prophetic pro-celibacy statements, and only quoted the Prophet very late in the section. Makki presumably did this in a general attempt to deflect from the message of Prophetic *hadit* as a whole, since it is overwhelmingly pro-marriage.

p.24, 1.5-6/ p.238, 1.25-26
p.24, 1.6-7/p.240, 1.5-6
p.24, 1.7-8 /p.247, 1.26
p.24, 1.8/p.247, 1.26-27
p.24, 1.8-9/p.247, 1.27-28
p.24, 1.9-10 /p. 249, 1.20-21
p.24, 1.10-11/p.249, 1.21-22

2.3.The merits of marriage

2.3.a.Children ----->

Ghazali's most important argument in favour of marriage is procreation. He considered procreation desirable for four reasons: because it guarantees the survival of the human race, increases the number of Muslims who will be a source of pride for the Prophet on Judgment Day, allows parents to leave behind children who will pray for them, and provides parents with potential intercessors on their road to Paradise. Of all these arguments in favour of procreation, Ghazali considered survival of the human race to be the most significant. Makki, however, did not mention this aspect of procreation, although he reported traditions which refer to the other three aspects.

p.26, 1.10-11/p.242, 1.11-12

With the exception of three (taken from p.243), all traditions are taken from one section of Makki's text (on page 242), and are repeated almost verbatim and in essentially the same order.

p.26, 1.11-12/p.242, 1.31
(Makki also p. 257, 1.7-8)
p.26, 1.12/p.242, 1.30-31
(Makki also p.257, 1.6-7)
p.26, 1.12-13/p.242, 1.31-32
(Makki also p.257, 1.7)
p.26, 1.19-20/p.243, 1.20-21
p.26, 1.20/p.243, 1.21
p.26, 1. 22/ p.242, 1.14
p.26, 1.22-24 /p.242, 1.14-15
p.26, 1.24 - p.27, 1.5/p.242, 1.15-21
p.27, 1.6/p.242, 1.21-22
p.27, 1.6-7 /p. 242, 1.22-23
p.27, 1.8-14 /p.242, 1.23-30
p.27, 1.14-15/p.243, 1.12, 19-20

2.3.b. Protection from sin: p.28, l.17 /p.240, l.11-12

Traditions from Ghazali p.28, l.17 to Ghazali p.29, l.11 express the following idea: sexual desire, if unfulfilled, is troublesome and dangerous, not only because it disturbs worship, but because it can lead to fornication; the best way to silence desire and to protect oneself against its dangers is through marriage. For Ghazali, the desire to protect oneself against the dangers of sexual lust is entirely acceptable; it is, indeed, his second most important argument in favour of marriage. Makki, however, expressed contempt for those not strong enough to suppress desire, and who need marriage to protect themselves against their own passions. The section in which Makki quoted these traditions on the dangers of unfulfilled desire is preceded by a statement in which the man who is unable to control his sexual desire is compared to a donkey on heat.

p.28, l.18-19/p. 240, l.13-14
p.28, l.19-20/ p.240, l.14
p.28, l.23/ p.240, l.16
p.28, l.24-28/p.240, l.23-28
p.28, l.28 - p.29, l.2/p.240, l.28-31
p.29, l.3/p. 241, l.4
p.29, l.10-11/p.241, l.4-7
p.29, l.11/p.241, l.7

p.29, l.15-19/ p.239, l.27-32

Slave marriage: Ghazali recommended marriage to a slave woman for someone unable to afford a free woman, and who is in danger of fornication if he remains unmarried. For Ghazali, marriage to a slave woman was an inferior option; marriage to a free woman is always preferred. Makki, however, recommended marriage to a slave woman first, implying that marriage to a slave woman is better than marriage to a free woman. (presumably because a wife who is the property of someone else is less of a liability, especially since her children belong to her owner).

p.30, 1.1-2/p.244, 1.23-24

Both Makki and Ghazali recommended that a man who is not satisfied by one woman should marry more, up to four. And if four wives are not sufficient to silence his desire, he should divorce and exchange them for others. In Makki's text, this recommendation is followed by a highly absurd justification of polygamy, which Ghazali omits. In Makki's text, this recommendation is also followed by three traditions about Hasan, (p.246, 1.19-22, 1. 25-28, 1. 28-30) portraying him as a man who divorced and remarried frequently. Makki reported these traditions to underline the apparent ease with which early Muslims exchanged their wives. Ghazali placed the same traditions in the section on divorce, focusing, instead, on the problematic aspects of divorce, which they also address.

p.30, 1.2-3/p.246, 1.17
 p.30, 1.4/p.246, 1.24-25
 p.30, 1.4-5/p.246, 1.23-24
 p.30, 1.5-6/p.246, 1.23
 p.30, 1. 6-7/p.246, 1.31-32

2.3.c. Companionship ----->

With the exception of the last tradition, Ghazali copied this entire section from Makki. Ghazali believed that this potential benefit of marriage was still relevant in his own time. Makki, however, suggested that it had been relevant for earlier generations, but no longer applied in his own age.

p.30, 1.12/p.247, 1.3
 p.30, 1.12-13/ p.247, 1.4
 p.30, 1.16/p.247, 1.5-6
 p.30, 1.17/p.247, 1.6-7
 p.30, 1.17-18/p.247, 1.7-8

p.30, 1.21/p.249, 1.18-19

In Makki's text, this tradition appears in a separate section in which he suggests that wife and children do not have to distract from God but can, indeed, bring a man closer to Him.

2.3.d. Housekeeping ----->

Ghazali added this aspect of marriage to the discussion. The traditions which he quoted from Makki refer in general terms to the help and support a good wife can offer her husband (an aspect which Makki summarily dismisses with his claim that these traditions speak about days gone by, when women used to be better.) But Ghazali focused on a very practical aspect: the fact that a wife liberates her husband from household chores, leaving him more time for prayer and study.

p.31, l.8-9/p.244, l.11-12

This tradition, which praises the positive contribution a woman can make to her husband's life is followed, in Makki's text, by a statement to the effect that, however helpful her contribution might be, solitude is always more conducive to spiritual advancement.

p.31, l.10/ p.244, l.10-11
p.31, l.10-11/p.243, l.18-19
p.31, l.12/p.244, l.11
p.31, l.12-14/p.244, l.13-15
p.31, l.14-16/ p.243, l.29-31

2.3.e. Training of the self ----->

The traditions in this section speak of the merit to be gained from fulfilling one's obligations towards others. All but two traditions are taken from one section in Makki's text; Ghazali copied them in the same order and without significant alterations. However, Makki merely reported these traditions; they do not appear to express his own opinion. Makki's own opinion, according to which family obligations distract the Sufi from his primary obligation to himself, is clearly stated on pages 238 and 247. Ghazali, responding to Makki in this section (especially p.33, l.1-4), is able to show how the Sufi, in particular, can benefit from the challenges of family duties, helping him to train and improve his character.

p.31, l.25/p.251, l.20
p.32, l.3-4/p.248, l.18-19
p.32, l.4-5/ p.248, l.20-22
p.32, l.5-8/p.248, l.22-25
p.32, l.8/p.248, l.27-28
p.32, l.9/p.248, l.28
p.32, l.9-10/p.248, l.29-30
p.32, l.10/p.248, l.30
p.32, l.10-11/p.248, l.30-31
p.32, l.13-20/p.249, l.1-8

p.32, l.20-23/p.239, l.18-21

In Makki's text, this story about one of the Israelite prophets appears in a section describing the evils of women and family obligations. Ghazali mentioned it in his chapter on character training - for him, it served as an example of how patient endurance can train the self.

2.4. The harms of marriage

2.4.a. Financial burden ----->

All but three of the traditions which address the problematic aspects of marriage appear in one section in Makki's text. Ghazali merely rearranged them under three separate headings. In principle, Ghazali agreed with Makki on the problems which these traditions address.

p.33, 1.14-15/p.251, 1.9-10
p.33, 1.15-17/p.251, 1.12-15
p.33, 17-19/p.251, 1.11-12
p.33, 1.19-20/p.251, 1.15-16
p.33, 1.20/p.251, 1.16

p.33, 1.24-25/p.240, 1.9-11

Makki placed this tradition at the beginning of a section in which prominent members of the Muslim community comment on the irresistible strength of sexual lust, and of the danger of leaving sexual desire unfulfilled. It is as if Makki was calling them all donkeys!

2.4.b.Failure to fulfil moral responsibilities

p.33, 1.28/p.251, 1.20
p.33, 1.28/p.251, 1.16-17
p.34, 1.1/p.251, 1.17-18
p.34, 1.2-3 /p.251, 1.18-19
(also Ghazali, p.48, 1.2)

p.34, 1.8-9 /p.238, 1.7-9

Both Makki and Ghazali quoted the first part of this tradition once in support of marriage, and once as a warning against it (p.23, 1.22-23/p.241, 1.22-23)
(second part also Makki p.239, 1.8-9)

2.4.c. Distraction

p.34, 1.22/p.239, 1.8

3. Chapter Two:The Marriage Contract, and conditions and qualities of the ideal bride:

3.1. The marriage contract ----->

Makki's reference to the laws of marriage is extremely brief (four lines), a reflection of his lack of concern for the practical aspects of marriage. Ghazali, in contrast, provided comprehensive information on the laws of marriage, including all elements of the marriage contract and the legal conditions of eligibility for marriage.

p.36, 1.7/p.251, 1.2-3
p.36, 1.8-9/p.251, 1.2

3.1. Recommended practices: ----->

Certain elements of the marriage ceremony are not prescribed by the law but by custom. They are not essential for the validity of the marriage, but are considered proper. Ghazali repeated Makki's two recommendations, and added three of his own.

p.36, 1.15/p.248, 1.4-5
p.36, 1.17-19/p.248, 1.14-16

3.2.b. Qualities of the good wife ----> The following traditions give advice on the qualities the ideal wife should possess, on the types of women to be avoided, definitions of beauty etc. Ghazali copied these traditions without changing their message, and merely rearranged them under four headings (piety, good temperament, beauty, small dowry). He also added another four criteria which define the ideal bride (virginity, fertility, good descent, no close relation).

3.2.b.i. Piety

p.37, 1.24-26/p.254, 1.3-5

Makki mentioned this tradition in the context of divorce: if the woman behaves in this way, divorce her. Ghazali mentioned this tradition in order to underline the importance of choosing a religious wife who will not cause her husband this kind of trouble.

p.37, 1.29 - p.38, 1.1/p.249, 1.28-29
p.38, 1.1-2/p.249, 1.29-30
p.38, 1.2-3/p.249, 1.30-31

3.2.b.ii. Good temperament

p.38, 1.6-13/p.255, 1.23 - p.256, p.1
p.38, 1.14-17/p.256, 1.1-6
p.38, 1.17-20/p.256, 1.6-8
p.38, 1.25/p.250, 1.6
p.38, 1.25 - p.39, 1.1/p.250, 1.11-12
p.39, 1.1-2/p.250, 1.12-13
p.39, 1.2-3/p.250, 1.10-11
p.39, 1.4-5/p.250, 1.13
p.39, 1.5-7/p.248, 1.5-7
p.39, 1.16-17/p.249, 1.32 - p.250, 1.1
p.39, 1.17-19/p.250, 1.1-4
p.39, 1.19-20/p.250, 1.4-5
p.39, 1.21-24/p.243, 1.31-p.244, 1.1
p.39, 1.24-26/ p.244, 1.1-4 & 1.7-8
p.39, 1.26-27/p.244, 1.8-10

3.2.b.iii. Small dowry ----->

Makki and Ghazali agreed that marriage should not be turned into a commercial transaction. Ghazali copied the entire section from Makki, making very slight alterations.

p.39, 1.27/p.250, 1.14
p.40, 1.2-3/p.250, 1.14-15
p.40, 1.3-4 /p.250, 1. 15
p.40, 1.4-5 /p.250, 1.16-17
p.40, 1.6/p.250, 1.19
p.40, 1.6-7/p.250, 1.20-21
p.40, 1.8/p.250, 1.22
p.40, 1.9/p.250, 1.24-25
p.40, 1.9-10/p.250, 1. 24
p.40, 1.10/p.250, 1.25-26
p.40, 1.11/p.250, 1. 29-30
p.40, 1.11-12/p.250, 1.26-28
p.40, 1.14-16/ p.250, 1.28-29

3.2.c. Qualities of the good husband—> Again, the basic content of the section is copied from Makki, with Ghazali adding a few criteria.

p.41, l.15-16/p.250, l.32
p.41, l.17-18/p.250, l.30-31
p.41, l.18-19/ .251, l.1

4. Chapter Three: The Conduct of Married Life

4.1. The responsibilities of the husband ———> Ghazali rearranged the material on this issue which Makki had collected, dividing it into sections with headings. In several cases, Ghazali broke up sections in Makki's text dealing with one aspect of marital life, and rearranged the content under different headings (eg. Makki, p.254, l.27; p.253, l.30-31) Alternatively, Ghazali took entire sections of Makki's text, and rearranged them in a different order. Ghazali also took material from different parts of Makki's text and placed them under one heading. Unless indicated otherwise, these changes do not alter the meaning and message of the traditions and/or statements, but merely present them in a different order. All of the husband's marital responsibilities listed by Ghazali were also mentioned by Makki, with the exception of what to do in the event of childbirth, advice which Ghazali added.

4.1.a. The marriage banquet ———> Same recommendation; however, in Makki's text, the marriage banquet is mentioned in one line; Ghazali devoted an entire chapter (consisting of 22 lines) to the celebration and announcement of the wedding, which includes the banquet.

p.42, l.5/p.250, l.16

4.1.b. Gentle and forgiving treatment> Only rearranged, otherwise taken verbatim from two different parts of Makki's text

p.42, l.15-16/p.254, l.26
p.42, l.16/p.254, l.27-28
p.42, l.16/p.254, l.28
p.42, l.17-19/p.254, l.28-31
p.43, l. 3-4/p.253, l.1-2
p.43, l.6-8/p.253, l.2
p.43, l.8-11/p.253, l.2-7
p.43, l.11-12/p.253, l.7-8
p.43, l.12-14/p.253, l.8-10

4.1.c.Provision -----> of amusement and fun

p.44, l.1-2/p.253, l.10-11
 p.44, l.4/p.253, l.11-12
 p.44, l.11-12/p.253, l.12-13
 p.44, l.12/p.253, l.13-14
 p.44, l.13/p.253, l.14-15

Taken verbatim from one section in Makki

4.1.d. Without following women's every whim or losing his authority

p.44, l.18-p.45, l.3/p.255, l.1-7
 p.45, l.3-5/p.255, l.8-9
 p.45, l.5-6/p.255, l.9-10
 p.45, l.6-9/ p.255, l.11-13

Quoted in the same order, with very slight variations

p.45, l.12-13/p.238, l.29-30
 p.45, l.13-14/p.238, l.30-31
 p.45, l.16-17/p.238, l.31-32
 p.45, l.17-18/p.239, l.2-4
 p.45, l.18-19/p.239, l.4-5

In Makki's discussion, these traditions (p.238, l.30 -p.239, l.5) appear at the beginning. Makki quoted them to support his argument that women are frivolous and corrupt and have a bad influence on men, and should, for these reasons, be avoided. Ghazali quoted the same traditions in the context of describing men's responsibility: if a man wants to ensure marital harmony, he must be firm with his wife, because women have a tendency to be flippant and whimsical (as described in the traditions), and these characteristics must be corrected with sternness.

p.45, l.19-20/p. 253, l.30-31

In Makki's text, this tradition appears in a section with other traditions from Umar. Ghazali placed it separately from the others.

4.1.e. Control of jealousy ----->

p.46, l.2-3/p.252, l.31
 p.46, l.3-5/p.253, l.15-16
 p.46, l. 5/p.253, l.16-17
 p.46, l.11-12/p.253, l.18
 p.46, l.16-17/p.253, l.25-27
 p.46, l.18-19/p.253, l.27-28
 p.46, l.19-20/p.253, l.28-29
 p.46, l.20/p.253, l.29
 p.47, l.1/p.253, l.29-30
 p.47, l.3-5/p.253, l.18-21

Ghazali copied this section from Makki, quoting him mostly verbatim, and rearranged only one tradition within the section. However, the first tradition is taken from another part of Makki's text.

4.1.f. Adequate and moderate financial expenditure: ----->
 p.47, 1.13/p.252, 1.27
 p.47, 1.15/p.252, 1.27-28
 p.47, 1.17/p.252, 1.28-29
 p.47, 1.18/p.252, 1.29
 p.47, 1.18-19/p.252, 1.29-30

Quoted verbatim, and in the same order

4.1.g. To know and teach her personal religious obligations ----->
 p.48, 1.1-9/ p.251, 1.3-8

Ghazali took all the basic elements of this section from Makki, but phrased it differently.

4.1.h. Just and equal treatment of each and every wife ----->
 p.48, 1.13-15/p.245, 1.23-24
 p.48, 1.15/ p.245, 1.22 & 1.24-25
 p.48, 1.16-17/ p.245, 1. 26-27
 p.48, 1.17-18/p.245, 1.27-29
 p.48, 1.18-22/p.245, 1.29-32
 p.48, 1.23 - p.49, 1.2/p.246, 1.5-7
 p.49, 1.2-5/p.246, 1.7-11

Ghazali copied these traditions from Makki with very slight variations.

4.1.i. Conduct in marital discord --->

Makki suggested that marital discord inevitably leads to separation. He mentioned marital discord in the middle of his discussion of divorce (p.254). His dismissal of reconciliation reflects his lack of interest in the survival of a marriage. For Ghazali, marital discord and divorce are two unrelated issues, which he discussed in separate chapters.

p.49, 1.7-8/p.254, 1.17-18

p.49, 1.12-14/p.252, 1.19-22

Both authors described measures a husband should take to bring his wife back to obedience. This advice is essentially the same, even if Ghazali expressed it slightly differently.

p.49, 1.14-16/p.254, 1.31-32

p.49, 1.16-19/p.252, 1.22-25

On chastisement: the same in both texts

4.1.j. Sexual relations ----->

In this section, Ghazali gave advice on four issues: sexual intercourse, menstruation, ritual purity and coitus interruptus. On the first three issues, Ghazali copied Makki's traditions and ideas, and he largely agreed with Makki. On the fourth issue, however, Ghazali strongly disagreed with Makki: Ghazali's discussion of coitus interruptus is a direct response to Makki and a refutation of his argument.

p.49, 1.20/p. 243, 1.24-25
 p.50, 1.2/p.243, 1.25-26

In Makki's text, this advice appears as part of an interpretation of a Quranic verse. Ghazali incorporated the advice, but not the Quranic verse, in this section.

p.50, 1.2-3/p.257, 1.20-21

Taken from one section in Makki's text with slight variations.

p.50, 1.3-4/p.257, 1.21-22

p.50, 1.4-5/p.257, 1.21

p.50, 1.9-11/p.257, 1.24-27

p.50, 1.11-12/p.257, 1.27-28

p.50, 1.12-15/p.258, 1.2-6

p.50, 1.15-16/p.246, 1.11-12,13

Makki gave this advice in the context of polygamy and the division of time.

p.50, 1.17-22/p. 258, 1.9-14

Makki reported two opinions on whether it is permissible to enjoy a woman's body during menstruation. Ghazali chose one of them.

p.50, 1.20/ p.243, 1.12-14

Makki gave two possible interpretations of this Quranic verse; Ghazali gave a third.

p.50, 1.22-23/p.257, 1.22-23

p.50, 1.23-24/p.257, 1.28

p.50, 1.24/p.257, 1.30

p.50, 1.25 - p.51, 1.1/p.257, 1.31

p.51, 1.2-3/p.257, 1.31-33

p.51, 1.3/p.257, 1.33

(Coitus interruptus) ----->

Ghazali's discussion of coitus interruptus provides the clearest proof that Ghazali was responding to Makki. Ghazali repeated parts of Makki's argument, but largely with the intention of refuting it. There are only two instances in this section where Ghazali agreed with Makki.

p.51, 1.10-13/p.256, 1.12-19

p.52, 1.2/p.256, 1.9 & 1.20

p.52, 1.9/p.256, 1.20-22

Ghazali agreed with Makki that fear of daughters is a reprehensible motive for practising contraception.

p.52, 1.12-14/p.256, 1.31 - p.257, 1.4

Ghazali agreed with Makki that excessive cleanliness and aversion to childbirth are reprehensible motives for practising contraception.

p.52, 1.15/ p.257, 1.4

p.52, 1.22 - p.53, 1.1/p.256, 1.11 & p.257, 1.13-20

Makki strongly disapproved of coitus interruptus. Nevertheless, he included in his discussion a tradition from 'Ali in which 'Ali undermines one of Makki's strongest arguments against the practice of coitus interruptus. Ghazali copied 'Ali's words, using them to underline his own argument in favour of permitting the use of coitus interruptus.

4.1.1. Divorce ----->

Ghazali disagreed with Makki on divorce. Makki encouraged divorce, Ghazali considered it a last resort. Ghazali mentioned divorce only twice in his text, Makki mentioned it five times, reminding his reader more frequently of the option.

p.55, 1.6/p.254, 1.9-10
p.55, 1.8/p.254, 1.23

Makki quoted the Prophetic *hadīṭ* and the Quranic verse warning against the irresponsible use of divorce as isolated statements in a section which is otherwise dominated by arguments in favour of divorce. The *hadīṭ* appears somewhere in the middle of the section, the Quranic verse at the very end. Ghazali, however, placed the two statements at the beginning of his section on divorce.

p.55, 1.12-13/p.254, 1.5-6

Ghazali responded to Makki by completing this tradition, which alters its message.

p.55, 1.13-14, 15/p.254, 1.10-12
p.55, 1.16/p.254, 1.13-14
p.55, 1.17/p.254, 1.14

Both authors mentioned *kul^c* divorce, the Quranic verse which permits it, as well as the conditions for its use.

p.55, 1.18 - p.56, 1.2/p.258, 1.15-34

The section containing the laws of divorce is structured differently in the two texts; however, the basic laws of divorce which they describe are the same. Ghazali added two recommendations.

p.56, 1.4-7/p.246, 1.25-28
p.56, 1.7-8, 11-16/p.246, 1.28-30
p.56, 1.16-19/p.246, 1.19-22

Makki quoted these three traditions about Hasan in order to underline the apparent ease with which the early Muslims divorced. Ghazali used the same traditions to discourage divorce.

p.56, 1.21-22/ p.254, 1.18

p.56, 1.22-23/p.254, 1.19-20
(Makki also p.259, 1.1, 2, 4)
p.56, 1.23/p.254, 1.18-19
(Makki also p.251, 1.10-11
and p.259, 1.8-9)

These two statements contain reassurance that God provides for those who separate. Makki repeated one of the statements twice, and the other one three times, perhaps with the aim of encouraging his married reader to separate from his wife. Ghazali mentioned each statement once, and in the specific context of showing that divorce is permitted, not encouraged.

4.2.The Responsibilities of the Wife. ----->

p.56, l.29 - p.57, l.1/p.251, l.24-25
 p.57, l.1-4/p.251, l.25-29
 p.57, l.4-6/p.251, l.29-30
 p.57, l.6-7/p.251, l.31-32
 p.57, l.7-10/p.251, l.32 - p.252, l.4
 p.57, l.10-12/p.252, l.5-7
 p.57, l.12-14/p.252, l.8-9
 p.57, l.14-17/p.252, l.11-13
 p.57, l.17-18/p.252, l.10-11
 p.57, l.18 - p.58, l.1/p.252, l.14-17
 p.58, l.1-2/p.252, l.17-18
 p.58, l.2-3/ p.252, l.18-19

p.58, l.5-6/p.247, l.8-10
 p.58, l.6-8/p.247, l.10-12
 p.58, l.8-15/p.247, l.14-25

p.58, l.15/p.251, l.20-21
 p.58, l.15-17/p.251, l.22-23

p.58, l.18-22/p.255, l.13-18
 p.58, l.22-p.59, l.3/p.255, l.18-22

Ghazali repeated the traditions mostly verbatim, and almost in the same order.

When Makki quoted these traditions, he suggested that this is the way women used to behave in the past, but that such good behaviour can no longer be found among women of his own age. Ghazali, in contrast, appears to present the behaviour described in the traditions as exemplary, encouraging women in his day to follow their ancestral sisters, and not in the least suggesting that this cannot be done.

These traditions advise women on how to behave in marriage (which is the heading under which they appear in Ghazali's text). Makki places them in a section otherwise devoted to traditions about women's guile, craftiness and other reprehensible characteristics.

**APPENDIX TWO: A STRUCTURAL ANALYSIS (II) -
GHAZALI'S REARRANGEMENT OF MAKKI'S TEXT**

The following list includes the most obvious examples of Ghazali's rearrangement of the contents of Makki's text. In many cases, Ghazali copied entire sections of Makki's text without altering the order in which traditions and/or statements appeared. But in other cases, sections in Ghazali's text are made up of material taken from several different locations in Makki's text. Listed here will be the sections in Ghazali's text which consist of material taken from at least three different locations in Makki's text.

The left hand side of the column shows sections as they appear in Ghazali's text - the headings indicate where passages are located in Ghazali's text. Unless otherwise indicated, the traditions and statements on the left hand side of the column appear as coherent sections in Ghazali's text. In cases where Ghazali did either add to or omit parts of Makki's text, the alteration is shown in [brackets].

The figures on the right hand side of the column indicate the location of the traditions or statements in Makki's text. The order in which traditions appear in Makki's text is indicated by small letters following the page/line reference (eg. (a)).

The translations are of Makki's text. Unless otherwise indicated, Ghazali copied Makki's text verbatim; in cases where the two texts differ, this will be marked in {brackets}. In some cases, Ghazali and Makki attribute a tradition to a different source; this, however, will not be indicated here.

2. Chapter One: The Case for and the Case against Marriage
2.1. Traditions in favour of marriage
2.1.a. From the Quran¹:

<i>Iḥyāʾ</i> :p.21, l.21 - p. 22, l.3:	<i>Qūt al-Qulūb</i> :
(24:32)"And marry such of you as are solitary."	p.237, l.28
[Ghazali adds a Quranic verse and its interpretation.]	

¹all translation of Quranic verses are taken from Mohammed M.Pickthall, *The Meaning of the Glorious Koran*. The numbers in brackets indicate the Sura (first number) and the Verse (second number).

God said in praise of His prophets(13:38) "We sent messengers (to mankind) before thee, and We appointed for them wives and offspring." [Ghazali adds his interpretation] p.243, 1.4-5

(25:74)"And who say: 'Our Lord! Vouchsafe us comfort of our wives and of our offspring.'" p.243, 1.6

It is said that God only mentioned married prophets in His Book.[Ghazali left out "namely thirty-five"] p.243, 1.1

We related [] that John the Baptist married a woman and did not approach her. Some say he married her in order to prevent himself from looking at what is forbidden (*ḡaḍḍ al-baṣar*), others say he did it for the sake of religious merit. [] Yet others say he did it to follow the *sunna*." {same story, slight variations} p.241, 1.15-17

As for Jesus, he will marry and have children when he comes down from heaven. p.243, 1.2-3

COMMENT:

In Makki's text, four of these traditions appear in the same section (p.243), but not in the same order as in Ghazali's text and not consecutively. Ghazali either omitted intermediate traditions, or placed them elsewhere in his text. The remaining two traditions/statements are taken from two different locations in Makki's text, ie. p.237 and p.241.

2.1.b. Prophetic traditions (*ḥadīṭ*):

Iḥyā' p.22, 1. 5 - p.22, 1.14. *Qūt al-qulūb*:

"Marry and multiply, so that on the Day of Resurrection I can boast about all of you, even miscarriages [], before the (other) nations." p.242, 1.9-10 (d)

"Whoever dislikes my example does not belong to my community. Part of my example is marriage. So let whoever likes me follow my example." p.242, 1.32 - p.243, 1.1(f)

"Whoever does not get married (*taraka al-nikāḥ*) for fear of poverty is not one of us." {Ghazali: *taraka al-tazwīj*} p.242, 1.11 (e)

"The man who has the means should marry." p.242, 1.5 (a)

"Whoever can afford to set up and support a household should get married, because it is the best cure against looking at what is forbidden (*aḡaḍḍ li'l-baṣar*) and the best way to protect one's genitals against fornication (*aḥsan li'l-farj*). Whoever cannot afford it should fast, because fasting will suppress his desire for intercourse." p.242, 1.6-7 (b)

Explanation of the term *wajāʿ*². Ghazali used Makki's words, but did not quote him verbatim. Makki's explanation is slightly longer than Ghazali's. p.242, 1.7-9 (c)

"If someone whom you find pleasingly pious and trustworthy comes to you (to ask for a woman in marriage), give her to him. (8:73)'If ye do not so, there will be confusion in the land, and great corruption.'" p.238, 1.3-4

"Whoever marries or gives in marriage for the sake of God deserves the friendship of God." p.238, 1.4-5

"When a man marries, he has protected one half of his religion, so let him fear God for the other half." p.240, 1.15-16

COMMENT:

Ghazali added explanations, which did not appear in Makki's text, to many of the Prophetic traditions listed in this section. In Makki's text (on page 242) four traditions appear consecutively (a - d). Tradition (f) appears later on the same page. Traditions and statements listed between (d) and (f) in Makki's text were all copied into Ghazali's text, but appear in a different section.

2.2. Traditions against marriage

Iḥyāʿ p.24, 1.3 - p.24, 1.10-11.

Qūt al-qulūb:

(*ḥadīth*): "The best person after the second century will be the one with a light burden who has neither wife nor child." p.239, 1.15-16

(*ḥadīth*): "A time will come when a man will be destroyed by his wife, parents and children, who will reproach him for his poverty and demand of him what he is unable to provide. This will make him do things which will violate his religious principles, and earn him eternal damnation." p.239, 1.16-17

One of the forefathers said: "A small number of dependants is a form of affluence, while a large number of dependants is a form of poverty." p.238, 1.25-26

When asked about women, Abu Muhammad said: "To cope without women is better than to cope with them, but to cope with them is better than to endure the Fire of Hell." {Ghazali: "When asked about marriage.."} p.240, 1.5-6

Abu Sulaiman al-Darani said: "The celibate finds in the sweetness of devotion and freedom of mind something the married man can never find." {In Makki, this passage is preceded by " For the one who can cope with hardship, marriage is better, but..." } p.247, 1.26

Abu Sulaiman al-Darani also said: "I have not seen one of our companions who married and remained in his former rank as a Sufi." p.247, 1.26-27

Abu Sulaiman al-Darani also said: "He who pursues three things shows a desire for this world: earning a living, marriage and recording traditions." {Ghazali: "..is dependent on this world"} p.247, 1.27-28

Hasan (al-Basri) is reported to have said: "If God wishes his servant well, he does not preoccupy him with a family or wealth." p.249, 1.20-21

Ahmad (bn Abi 'l-Hawari) said: 'We discussed this tradition with a group of scholars. It does not mean that he has neither wife nor children; rather, he has them, but they do not distract him.' {same tradition, slight variation} p.249, 1.21-22

COMMENT:

These traditions appear as a coherent section in Ghazali's text.

In Makki's text, they occur in five different locations. Traditions which appear on the same page in Makki's text (namely on pages 239, 247 and 249) appear consecutively.

3 . Chapter Two: The Marriage Contract, and conditions and qualities of the ideal bride

3.2. The bride

3.2.b. Qualities of the good wife

Iḥyā' p.37, 1.24 - p.39, 1.27.

Qūt al-qulūb:

A man complained to the Prophet about his wife's bad language. "Divorce her!" the Prophet said. "But I love her," the man replied. So the Prophet said "Then keep her." {Ghazali introduced this conversation as: "A man came to the Prophet and said "I have a wife who does not reject others wanting to touch her."}. p.254, 1.3-5

[Ghazali adds a lengthy comment].

(*ḥadīth*): "A woman is married for her wealth, her beauty and appearance, and her piety - but you should marry a woman for her piety." p.249, 1.28-29

(*ḥadīth*): "Whoever marries a woman for her wealth and her beauty will be deprived of her wealth and beauty. But whoever marries a woman for her piety, will be awarded by God with her wealth and beauty." p.249, 1.29-30

(*ḥadīth*): "Do not marry a woman for her beauty, because her beauty might destroy her; nor for her wealth, because it might make her extravagant. Marry a woman for her piety." [Ghazali omitted Makki's comment, added his own] p.249, 1.30-31

A bedouin said, advising his sons: " Do not marry the following six kinds of women: not the *annāna*, not the *mannāna*, not the *ḥannāna*; not the *haddāqa*, not the *barrāqa*, and not the *šaddāqa*." The *annāna* is a woman who moans and complains a lot, and is always bandaging her head. [Ghazali adds: There is no good in marriage to a sickly woman or a malingerer]. The *mannāna* is a woman who does things to please her husband but then says 'I did this and that for you.' The *ḥannāna* is a woman who pines for a former husband or for her child from another husband. The *haddāqa* is the one who covets and then buys everything, and demands from her husband everything she wants. And she might frequently look at men, in the manner in which some men eye women. The term *barrāqa* can refer to two types of women; one is a woman who gets angry about food, because there is too little of it, or simply because of her bad temper. This woman only eats alone and always considers her share of food too small. The Yemenis say: 'A woman '*baraqat*' and a child '*baraqa*' if they get angry about food.' The other is a woman who spends the entire day polishing and adorning her face, giving it an artificial glow. The *šaddāqa* is a woman who prattles too much, who has a sharp tongue and is eloquent in her speech. About this woman the Prophet said 'God hates big-mouthed chatterboxes.'" {the basic content of this tradition is the same in both text; there are some slight variations in vocabulary and order.}

p.255, 1.23 - p.256, p.1

It is told that the anchorite from the tribe of 'Azd met Elijah on his travels. Elijah ordered him to get married, saying that it was better for him, and forbade him to remain celibate. But he told him not to marry four kinds of women, the *mukṭali^ca*, the *mubāriya*, the *‘ahira*, and the *nāšiz*. The *mukṭali^ca* is a woman who seeks divorce (*kul^c*) for no good reason, even though her husband loves her. The *mubāriya* is a woman who deems herself superior to others and takes pride in worldly matters, who demands from her husband things so she can boast and be proud in front of her peers. The *‘ahira* is a wanton woman known to have boyfriend and lover. God said about her (4:25)' ...nor of loose conduct.' And the *nāšiz* is a woman who tries to get the better of her husband in word and deed." {again, the tradition is the same, with slight variations in presentation}

p.256, 1.1-6

'Ali used to say: "Three vices in men are virtues in women: avarice, pride and cowardice. If she is conceited -ie. vain - she has no inclination to talk to strangers. And if she is a coward, she is scared of everything, and so she does not leave the house and avoids suspicious places out of fear of her husband." {again, the tradition is the same, with slight variations in presentation} p.256, 1.6-8

[Ghazali adds a lengthy comment]

{ These two statements express the same idea: } Makki p.250, 1.6
 "It is recommended that the man look at the woman's face and at what attracts him to her before marrying her. The religious scholars of the Hejaz permit [this]."
 Ghazali "Religious law has recommended that the cause of affection be considered: for that reason, the bride should be seen before marriage." [Ghazali omitted Makki's explanation]

(*ḥadīṭ*): "If God has placed in the soul of one of you a longing for a woman, let him look at her face, for this is more likely to create intimacy between them (*an yu'dima bainahuma*)." p.250, 1.11-12

{ Ghazali took the idea from Makki, then rephrased it: } Makki: "*yu'dam* means skin touching skin. And it is more than just skin, for *al-bašara* is the outer layer of skin and *al-adama* the inner layer.[] " Ghazali: "In other words, they are more likely to be affectionate with one another. The expression '*an yu'dima bainahuma* ' is derived from 'two inner skins (*al-adama*) touching'. *Al-Adama* is the inner layer of skin, whereas *al-bašara* is the outer layer; the Prophet used *al-adama* to express a high degree of intimacy." p.250, 1.12-13

(*ḥadīṭ*): "There is something in the eyes of Ansar women; so if one of you wants to marry one of them, let him first look at her." [Ghazali added his explanation.] p.250, 1.10-11

(Abu Bakr Sulaiman bn Mahran) al-A'mash used to say: "Any marriage that is contracted without the groom having seen the bride will end in worry and sadness." [Ghazali added his comment] p.250, 1.13

A man who got married during Umar bn al-Khattab's reign had dyed his hair black. When he consummated the marriage, the dye faded and his old age became apparent. The woman's family asked Umar for help, saying 'We thought he was a young man!' Umar hit the man and said: 'You have deceived these people'. And he separated them." {slight variations} [Ghazali added his comment] p.248, 1.5-7

Abu Sulaiman al-Darani used to say: "Asceticism applies to everything; so someone marries an old woman or an unshapely one because he prefers to renounce this world." {slight variations} p.249, l.32 - p.250, l.1

Malik bn Dinar used to say: "Any one of you who refuses to marry an orphan, who is inexpensive to maintain and easily satisfied, even though he would be rewarded for clothing and feeding her, and marries the daughter of so and so - ie. an influential person - will find her making demands on him, saying: 'I want this or that dress!'" [6 words omitted by Ghazali] p.250, l.1-4

Ahmad bn Hanbal preferred a one-eyed woman to her sister, even though the sister was beautiful and healthy. He asked: 'Which one is more intelligent?' The answer was 'The one-eyed.' So he said: 'Marry me to her.'" [Ghazali omitted Makki's comment, added his own.] p.250, l.4-5

{The basic elements of the explanantion of the following saying are the same in Ghazali and Makki; again, the structure differs, and Ghazali shortened it slightly:} (Saying) "If a woman is beautiful, has a good character, black pupils and black hair, big eyes, white skin, is in love with her husband, and only looks at him, then she is like the wide-eyed *Huris* (*al-ḥūr al-ʿain*). (Explanation:)God said (about Paradise): (55:70) 'wherein (are found) the good and beautiful' - with 'good' he meant those with good characters and beautiful faces." p.243, l.31-p.244, l.1

"*Hawar* means the colour white, and *ʿain* means wide-eyed, and it is the plural of *ʿainā*. *Haurā* is the woman with a marked contrast between the white of her eyes and the deep black of her pupils and hair. God also said (56:36): 'Lovers (*ʿurubān*)...'. *Al-ʿAraba* can have two meanings. It can be a woman who loves her husband and a woman who desires intercourse. These are things that bring the pleasure of intercourse to perfection.[] God also described the women of Paradise as (37:48; 38:52; 55:56) 'those of modest gaze', meaning a woman who only looks at her husband []." p.244, l.1-4, 7-8

(*ḥadīṭ*): "The best of your women is the one who delights her husband when he looks at her, who obeys when he gives orders, and who protects herself and his property when he is absent." p.244, l.8-10

COMMENT:

Ghazali copied an entire section from Makki (p.249, l.28 - p.250, l.13), but omitted many of Makki's comments and added several of his own. Ghazali rearranged the section by changing Makki's order and inserting traditions taken from other locations in Makki's text, namely pp.243-4, p.248, pp.255-6. Traditions taken from page 243,

1.31- p.244, 1.10 and page 255, 1.23 - 256, 1.8 in Makki's text appear consecutively in both texts.

4. Chapter Three: The Conduct of Married Life

4.1. The responsibilities of the husband

4.1.d.Authority

*Iḥyāʾ*⁹, p.44, 1.18 - p.45, 1.20.

Qūt al-qulūb:

{The following passage is basically the same in content and meaning in both texts; however, the order in which statements and traditions appear differs:} The woman has no authority over you (the man), for God has put you in authority over her. Do not overturn God's wisdom by following your inclination, for the whole matter will backfire on you. Because it would be as if you had obeyed Satan, and complied with his words (4:119): "And surely I will command them and they will change Allah's creation." [] In the same sense the Prophet said: "Perish the slave of his wife". Because if the man follows his wife's whims, he will become her slave (*dakala taḥt al-taʿs*), and it will be as if he had exchanged the grace of God for thanklessness (as in Quran 14:28). God referred to the husband as the wife's master when he said (12:25): "They met her lord and master at the door." ie. her husband. Hasan al-Basri said: "God throws into the Fire any man who complies with his wife's wishes."

p.255, 1.2-7

Because (the woman) behaves like the soul: if you release her reins, she bolts with you, if you loosen her reins a small span, she drags you an arm's length, but if you tighten your grip and rein her in, you control her, and perhaps she will obey you.{slight variations, same message}

p.255, 1.8-9

Shafi' used to say: "There are three people who treat you with contempt if you treat them with respect, but treat you with respect if you treat them with contempt: the woman, the servant and the peasant." [Ghazali added an explanation]

p.255, 1.9-10

{slight variations, same tradition} Bedouin women used to teach their daughters to put their husbands to the test. Before the wedding, the woman would say to her daughter: "My daughter, test your husband before you take liberties with him: remove his spearhead; if he says nothing, cut meat on his shield; if he still does not object, use his sword to cut bones, and if he still remains patient, fasten a saddle on his back and mount him, because he is a donkey!" [Ghazali added a lengthy comment]

p.255, 1.11-13

(*ḥadīṭ*): "A good woman is as rare as the *āṣam* crow among two hundred crows [Ghazali omitted: *āṣam* meaning "white-bellied".] p.238, l. 29-30

Luqman said, advising his son: "My son, fear the mischievous woman, because she will turn your hair white before you are old; also fear malicious women, because there is no good in them, and beware even of the best among them." [Ghazali added a *ḥadīṭ* which does not appear in Makki's text, and explained it] p.238, l.30-31

The Prophet said of even the best women: "You are the companions of Joseph, (because) your preventing Abu Bakr from leading the prayer showed your preference for whim, deception and seduction." {slight variations} [Ghazali omitted Makki's explanation] p.238, l.31-32

When A'isha and Hafsa revealed the Prophet's secret, God said to them (66:4): "If ye twain turn unto Allah repentant, (ye have cause to do so) for your hearts desired..." - ie. gave in to a whim, and He ordered them to repent because they followed their desire. Then God said (66:4): "and if ye aid one another against him", meaning 'to cooperate'. And they are among the best of the Prophet's wives!" {slight variations} [Ghazali omitted Makki's comment] p.239, l.2-4

(*ḥadīṭ*): "A nation ruled by a woman does not prosper." p.239, l.4-5

Umar was once speaking about a matter, when his wife started to contradict him. He scolded her and said: "What have you to do with this. You are nothing but a toy in the corner of the house for us to play with when we need you; otherwise, you just stay where you are." {slight variations} p. 253, l.30-31

COMMENT:

Ghazali brought together traditions from three different locations in Makki's text (pp.238-9, p.253 and p.255.) In both texts, these traditions appear consecutively, with one exception, noted above, where Ghazali added a tradition which does not appear in Makki's text. Ghazali omitted Makki's comment and/or added his own several times. However, he did not alter the order in which the traditions appeared in Makki's text.

4.1.1.Divorce

Iḥyā' p.55, 1.6 - p.56, 1.23

Qūt al-qulūb:

{Makki} "Divorce is permitted, but it is reprehensible []. p.254, 1.9-10 (b)
A tradition relates that among all permitted things, divorce is the one God hates most." {Ghazali} "A man should know that divorce is permitted, but that of all permitted things it is the one God hates most." [Ghazali added a comment]

God said (4:34): "Then if they obey you, seek not a way against them" meaning 'do not search for a reason for divorce, and do not go looking for trouble with your wife and for the things you dislike in her.' {slight variation} [Ghazali added a tradition - and an explanation - not recorded by Makki] p.254, 1.23 (i)

Explaining God's words (65:1): "Expel them not from their houses nor let them go forth unless they commit open immorality", Ibn Mas'ud said: "whenever she abuses her husband's family and troubles him, then that is an immorality." Ibn 'Abbas here refers to the duration of the *'idda* period. [Ghazali added a comment which modifies the message of the tradition.] p.254, 1.5-6 (a)

There is no harm in the woman ransoming herself from her husband if she fears that she can not keep the limits of Allah and fulfil her obligations towards her husband. I strongly disapprove of the husband taking back from his wife as ransom more than he gave her. [Ghazali added reasons for disapproval]. God said (2:229): "And if ye fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if the woman ransom herself." {same content, different presentation, different opening} [Ghazali added a comment] p.254, 1.10-12 (c)

(ḥadīth): "Any woman who asks her husband to divorce her for no good reason will not smell the fragrance of Paradise." p.254, 1.13-14 (d)

(ḥadīth): "Women who ask for divorce are ungrateful." p.254, 1.14 (e)

{The laws of divorce are basically the same in both texts.} p.258, 1.15-34

Hasan sent one of his slaves to divorce two of his wives, saying: "Tell them to observe the *'idda*." He also told him to give each of them ten thousand dirham. The slave did this, and when he came back to Hasan, Hasan asked him: "What did they say?" The messenger answered: "One of them silently bent her head, but the other wept loudly, and I heard her say: "Small compensation from a departing lover." Hasan bowed his head in silence, asked God to be merciful to her and said: "If I ever returned to a woman, I would return to her." {very slight variations} p.246, 1.25-28

{ Same story, but more elaborate in Ghazali's text. } Hasan went to 'Abd al-Rahman bn al-Harith bn Hisham and asked for his daughter in marriage. Abd al-Rahman said: "You are one of the dearest people to me, but you divorce frequently, and I would hate my love for you to change. If you promise not to divorce her, I will give her to you." Hasan was silent, [] but said later: "'Abd al-Rahman only wants to put his daughter as a collar around my neck!" p.246, 1.28-30

Ali was embarrassed about [his son's frequent divorces], and hated it because he felt ashamed in front of the women's families any time Hasan divorced them. He used to say: "Hasan divorces frequently, so don't give women to him in marriage." A man from the Hamdan tribe said: "By God, oh Commander of the Faithful, we will certainly give to him in marriage whom ever he wants; the woman he loves, he can keep, and the one he dislikes, he can divorce!" This pleased 'Ali and he replied: "If I were a gatekeeper at the gate of Paradise, I would say to the people of Hamdan: Enter in peace!" {same story, slight variations} [Ghazali added a comment] p.246, 1.19-22

God has promised riches in the case of both marriage and separation. {same idea, expressed differently} p.254, 1.18 (f)

(24:32): "And marry such of you as are solitary and the pious of your slaves and maid-servants. If they be poor, Allah will enrich them of His bounty." p.254, 1.19-20 (h)

(4:130): "But if they separate, Allah will compensate each out of His abundance." p.254, 1.18-19 (g)

COMMENT:

Ghazali completely changed the order of the traditions he copied from page 254 in Makki's text. The order in which these traditions appear in Makki's text is indicated by small letters following the page/line reference (eg. (a)). Ghazali changed Makki's order to (b-i -a-c-d-e-[] - f-h-g). Traditions do not appear in a coherent section on page 254. Traditions taken from page 246 in Makki's text appear consecutively in both texts.

4.2. The Responsibilities of the Wife

Iḥyā' p.56, l.29 - p.59, l.3.

Qūt al-qulūb:

(*ḥadīth*): "Any woman who dies leaving a husband who was content with her will enter Paradise." [three words left out] p.251, l.24-25 (c)

A man had gone on a journey and had told his wife not to come down from the upper part of the house to the lower part. Her father was living in the lower part, and he fell ill. The woman sent word [to the Prophet], asking him for permission to go down to her father's part of the house, but the Prophet said: "Obey your husband." The father died, and the woman again asked the Prophet for permission to go to the lower part of the house, but he told her once more to obey her husband. Her father was buried, and then the Prophet sent her the news that God had forgiven her father because of her obedience to her husband." {very slight variations} p.251, l.25-29 (d)

(*ḥadīth*): "If a woman prays her five daily prayers, fasts during Ramadan, is chaste and obeys her husband, she will enter the Paradise of her Lord." (The Prophet) thus added obedience to the husband to the fundamentals of Islam." [three words left out] p.251, l.29-30 (e)

Speaking of women, the Prophet said: "They bear children, give birth, breastfeed and are compassionate towards their children; if not for the things they do to their husbands, those among them who pray would enter Paradise." p.251, l.31-32 (f)

{The content of these two Prophetic traditions is the same in both texts. However, Ghazali transferred part of one *ḥadīth* to the other, and left out a small section.} p.251, l.32 - p.252, l.4(g)
The Prophet said: "I looked into Hell and most of the people I saw there were women. And then I looked into Paradise, and there I saw only a small number of women. So I asked 'Where are all the women?' And someone answered: 'They were preoccupied with the two red things: gold and saffron.' meaning jewelry and wearing saffron-died clothes." [4 words left out] The Prophet also said: "Give your jewelry away as alms, because I saw that the majority of the people in Hell are women." Women asked him: "But why, oh Messenger of God?" He answered: "Because they curse a lot and are ungrateful to their companion - ie. the husband who is a companion to them - and they are ungrateful for the kindness he shows them."

Um^m'Abd al-Mughniya reported that A'isha said: "A young woman came to the Prophet and said: 'Oh Messenger of God, I am a young woman and I have been proposed to, but I dislike marriage. So what exactly does the woman owe her husband? 'The Prophet answered: 'If he was covered in pus from head to toe, and she licked it off, she would not have sufficiently shown her gratitude.' 'I will not marry, then!' the young woman said. 'Certainly, marry!' answered the Prophet, 'because marriage is a good thing.'" {very slight variations}

p.252, l.5-7 (h)

We have reported on the authority of 'Ikrima that Ibn 'Abbas said that a woman from the tribe of Kha'tham came to the Prophet and said: "I am a single woman, and I would like to get married. So what exactly can a man demand from his wife?" The Prophet answered: "The husband can demand from his wife never to refuse him when he wants her and tries to seduce her, even if she is riding a camel."

p.252, l.8-9 (i)

It is his right to demand that she does not give away anything from his house without his permission. If she does so anyway, then she is penalized while he earns the reward. Further, it is his right to ask her not to do supererogatory fasting without his permission, and if she still does it, she goes hungry and thirsty, but none of it is accepted. It is also his right that she does not leave the house without his permission. If she goes without permission, the Angels curse her until she returns to her house or repents." {slight variations}

p.252, l.11-13 (k)

(*ḥadīṭ*): "If I ordered any human being to prostrate himself before anything but God, I would order the wife to prostrate herself before her husband, because of the magnitude of her duty towards him."

p.252, l.10-11 (j)

(*ḥadīṭ*): "A woman is closest to the face of her Lord when she is well inside her house. Prayers she performs in the courtyard of her house are better than prayers she performs in the mosque; prayers she performs inside the house are better than prayers she performs in her courtyard and prayers she performs in the *mukḍa*^c are better than prayers performed anywhere else in the house." The *mukḍa*^c is a small room inside the house, which is preferred because the woman is indecent (*ʿaura*); whatever hides her best is safest for her[.]

p. 252, l.14-17 (m)

(*ḥadīṭ*): "A woman is indecent (*ʿaura*); when she leaves her private room, the Devil has his eyes on her.""

p.252, l.17-18 (n)

(*ḥadīṭ*): "A woman has ten naked parts (*ʿaurāt*); when she gets married, her husband veils one of them, and when she dies, the grave covers all ten." p.252, l.18-19 (o)

Upon leaving his house, the man would be told by his wife "Oh husband", and by his daughter "Oh father, do not earn anything unlawful today, because it will get you into Hell, and we will have been the reason. We would rather suffer hunger and harm than be a punishment for you." {very similar story, same message} p.247, l.8-10

One of the forefathers wanted to go on a raid and leave his wife behind. His brothers, because they were close to him, were against this. They went to his wife and said: "Why do you let your husband travel when this means that he will be away for an unknown length of time during which he cannot provide for you?" She replied: "For as long as I have known my husband, I have known him as a hearty eater, but never as a provider. So the eater is leaving while the provider is staying." {Makki's version of this tradition is longer. Ghazali shortens it} p.247, l.10-12

[Ghazali omits a short tradition.]

Rabi'a bint Isma'il proposed marriage to Ahmad bn Abi 'l-Hawari. But he disliked the idea of marriage because he was completely involved in worship. But she urged him constantly, so he said to her: "Oh Rabi'a, I have no interest in women because I am too occupied with my own spiritual state." She replied: "Oh Ahmad, I am even more concerned with my spiritual state than you are with your's, and I have no desire for men, either. However, I have inherited 300.000 dirham of legally earned money from my husband, and I would like you to spend it in support of you and your Sufi brothers. Through you, I will get to know righteous people, which will lead me to God." "I cannot give you a reply," Ahmad said, "until I have asked my teacher for permission." (The narrator changes to Ahmad himself:) "I went to Abu Sulaiman al-Darani and told him what she had said. Abu Sulaiman had previously prohibited me ~~to marry~~ saying that everyone of our companions has changed through marriage. But when I told him what she had said, he placed his head in his hands and was silent for an hour. Then he raised his head and said: "Oh Ahmad! Marry her, she is one of the saints of God. These are the words of the righteous." Ahmad said: "So I married her, and in her house there was a basin made of gypsum which became completely worn out by the guests leaving and washing their hands after they had eaten, to say nothing of those who had already washed their hands with soap (lit. *uṣṇān*: potash) in the house. And I married three other women in addition to her, and Rabi'a would feed me well and perfume me, and say 'Go to your wives with your strength and energy.' [] She was a good woman, and the people of Syria likened her to Rabi'a al-Adawiyya of Basra." {same story, slight variations}

p.247, 1.14-25

from marrying

(*ḥadīth*): "The woman is a keeper of her husband's wealth, and responsible for it." {Ghazali expresses it as: "It is also one of the woman's duties not to squander her husband's wealth, but rather to save it."}

p.251, 1.20-21 (a)

She is not allowed to feed others with food from her husband's house, unless she uses fresh food which one fears might spoil. If she feeds others and spends money with his permission and approval, they both get the same reward. But if she does it without his permission, then he is rewarded while she is penalized. {very slight variations}

p.251, 1.22-23 (b)

Asma' bn Kharija al-Fazari [] gave this advice to his daughter on the night before her wedding: "You have left the nest in which you grew up for a bed you do not know and a companion who is a stranger to you. Be his earth and he will be your sky; be his resting place, and he will be your support; be his maid, and he will be your servant. Do not pester him, because he will hate you for it, and do not refuse him, because then he will forget you. If he approaches you, draw near him, and if he keeps his distance, avoid him. Take care of his nose, his hearing and his eyes, so that he only smells pleasant scents on you, only hears good things, and only sees beauty." {different opening} p.255, l.13-18

Asma' bn Kharija al-Fazari said: "Seek my pardon to make my love last, and do not talk to me when I am furious. Do not ever beat me like you beat your drum, because you do not know what will happen. Do not complain much, for you will destroy love, and my heart will refuse you, for hearts can change." p.255, l.18-22

COMMENT:

This section appears in Ghazali's text with only one single interruption, a short comment on page 58 taking up no more than two lines.

The traditions are taken from three different locations in Makki's text. Traditions taken from page 251, l.20 - p.252, l.19 (the order in which these traditions appear in Makki's text is again indicated by small letters following the page/line reference) appear as one coherent section in Makki's text; Ghazali divided these traditions up (a&b) and slightly altered the order (i - k - j) not (i -j- k).

Traditions on page 247 and page 255 appear consecutively.

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